

REPORT OF THE
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

January 2007

New Mexico Legislative Council Service
Santa Fe, New Mexico

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REPORT OF THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

Introduction

This is the first interim report of the Investments and Pensions Oversight Committee. The committee was created by the New Mexico Legislative Council as the successor to the State Permanent Fund Task Force. That task force was originally created in 2003 by Senate Joint Memorial 14, and was continued pursuant to Senate Joint Memorial 13 of the 2005 first session. House Bill 212 of the 2006 session would have created a committee much like the Investments and Pensions Oversight Committee; however, the bill was pocket vetoed by Governor Richardson. Notwithstanding, the committee took upon itself the broad responsibilities outlined in House Bill 212.

During the interim, the committee examined the investment and financial management practices of the State Investment Council, the state treasurer, the Public Employees Retirement Association and the Educational Retirement Board. Specifically, the committee reviewed investment policies and practices, reporting procedures and benchmarks, alternative investment opportunities, including oil and gas hedging, and the actuarial condition of the retirement funds. The committee embarked upon a review of retirement benefits and explored the possibility of restructuring the retirement fund boards of directors. Finally, the committee received testimony from several groups of employees that are seeking a change in retirement benefits.

Background

The original State Permanent Fund Task Force was created in recognition of the fact that the land grant and severance tax permanent funds "are an integral and necessary ingredient for the future prosperity of New Mexico's citizens" and because the "actuarial soundness of the retirement funds is absolutely necessary in order to maintain a healthy work environment in the public sector". Moreover, passage of Senate Bill 181 of the 2005 first session focused attention on the unfunded liability of the Educational Retirement Board and the need for the committee to explore strategies to guarantee the ability of the public pension funds to meet their statutory obligation.

The Investments and Pensions Oversight Committee followed through with the mission of that task force; however, issues surrounding management of the State Treasurer's Office

focused new attention on internal controls, integrity and conflict of interest associated with the investment of public funds.

Statutory Duties

The committee has no mandate in statute, but as discussed earlier, the committee followed the precepts of House Bill 212 of the 2006 session.

Membership

The committee consisted of 10 voting members and 15 advisory members, including members of the legislature and certain designated public officials. The voting members appointed by the New Mexico Legislative Council for the 2006 interim included:

Chair

Representative John A. Heaton

Vice Chair

Senator John Arthur Smith

Legislative Members

Representative Donald E. Bratton

Senator Joseph J. Carraro

Representative Miguel P. Garcia

Senator Phil A. Griego

Representative Larry A. Larranaga

Senator Carroll H. Leavell

Representative Henry Kiki Saavedra

Representative Luciano "Lucky" Varela

The advisory members appointed by the New Mexico Legislative Council for the 2006 interim included:

Legislative Members

Senator Pete Campos

Senator Carlos R. Cisneros

Senator Joseph A. Fidel

Representative Justine Fox-Young

Senator Stuart Ingle

Representative Patricia A. Lundstrom

Representative Kathy A. McCoy

Senator Leonard Lee Rawson

Senator H. Diane Snyder

Representative Joe M Stell

Public Officials

Gary Bland, State Investment Council

Douglas Brown, State Treasurer

Frank Foy, Educational Retirement Board

Robert Gish, Public Employees Retirement Association

Olivia Padilla-Jackson, State Board of Finance

Other frequent participants included Evalynne Hunemuller, executive director of the Educational Retirement Board; Terry Slattery, executive director of the Public Employees Retirement Association; Robert Jacksha of the State Investment Council; and Scott Stovall, deputy state treasurer.

The committee received staff support from the Legislative Council Service (LCS) and Legislative Finance Committee (LFC).

Work During the 2006 Interim

The committee convened on four occasions, meeting in Santa Fe. The committee began its work by reviewing reports from the state treasurer, the Public Employees Retirement Association, the Educational Retirement Board and the State Investment Council with respect to fiscal year 2006 investment performance. The committee explored hedging of oil and gas futures, an alternative investment strategy, with the objective of insulating state tax revenue from a downturn in the oil and gas markets. The committee was briefed on the status of State Investment Council economically targeted investments, with emphasis on the motion picture and television investments. Also, the committee was informed about the State Investment Council student-managed investment initiative. The Retiree Health Care Authority briefed the committee on General Accounting Standards Board (GASB) Rule 45, progress made toward achieving compliance with the rule and the implications for New Mexico's bond rating.

The committee received a report from the Governor's Ethics Reform Task Force with specific emphasis on public official's acceptance of gifts and avoidance of conflict of interest.

The New Mexico Finance Authority briefed the committee on its investments, internal controls and request for proposal procedures.

The committee reviewed and compared retirement plan benefits, employer and employee contribution rates, and the unfunded liabilities of both the education and public employee funds. The deferred compensation plan was explored as a tool that may be used to supplement the defined benefit retirement plan.

The composition of the boards of the Public Employees Retirement Association, State Investment Council and Educational Retirement Board was reviewed and evaluated with respect to financial expertise of board members.

Finally, the committee received testimony from several groups that are seeking enhanced retirement benefits. These groups included the Department of Public Safety, the Motor Transportation Division, district attorneys, juvenile correctional and probation officers, adult parole officers and the E911 communications workers.

Highlights of Recommendations and Proposed Legislative Changes

After much deliberation and extensive testimony, the committee endorsed the following legislation:

1. Creation of a permanent interim "State Investment and Retirement Systems Oversight" committee consisting of 10 voting members, five from the House of Representatives and five from the Senate plus five nonvoting members representing the State Investment Council, the Public Employees Retirement Association, the Educational Retirement Board, the Department of Finance and Administration and the State Treasurer's Office. The powers and duties would include oversight of state investment and financial management practices and analysis of the actuarial condition of the retirement systems.
2. A revision to the return-to-work provisions that currently exist. After July 1, 2007, an employee, other than a state employee, returning to work may only do so if the hiring body passes a resolution declaring that the employment of a retiree fills a critical need.
3. A revision to the Local Government Investment Pool rules that will allow broader participation on the part of political subdivisions and tribal entities in the Short-Term Investment Fund.
4. Designation of the Retiree Health Care Fund as an irrevocable trust in response to the

Generally Accepted Accounting Standards Board (GASB) Rule 45. This measure will assist the Retiree Health Care Authority with its actuarial outlook.

5. A bill prohibiting the diversion of severance tax revenue from being deposited to the Severance Tax Permanent Fund. At present, all but five percent of the annual severance tax revenue is used to service the debt on bonds. The purpose of this legislation is to ensure that this remaining five percent is placed in the permanent fund.

6. A memorial urging the legislature to place a moratorium on the enhancement of retirement benefits for a period of two years. The committee heard from numerous employee organizations that are seeking a conversion from 25-year to 20-year retirement. Given the actuarial status of the retirement funds, particularly the Educational Retirement Fund, the committee is urging that no benefit enhancements be approved at this time.

Finally, the committee considered modifying the composition of the Board of Directors of the Educational Retirement Board. While there was a general consensus that there should be a requirement that board members possess a certain level of financial or investment experience, no conclusion was reached and the committee did not endorse legislation that would alter the board's composition.

Appendix A

2006 Interim Work Plan

2006 APPROVED
WORK PLAN, MEETING SCHEDULE AND BUDGET
for the
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

Members

Rep. John A. Heaton, Chair

Sen. John Arthur Smith, Vice Chair

Rep. Donald E. Bratton

Sen. Joseph J. Carraro

Rep. Miguel P. Garcia

Sen. Phil A. Griego

Rep. Larry A. Larranaga

Sen. Carroll H. Leavell

Rep. Henry Kiki Saavedra

Rep. Luciano "Lucky" Varela

Advisory Members

Gary Bland, State Investment Council

Sen. Pete Campos

Sen. Carlos R. Cisneros

Sen. Joseph A. Fidel

Frank Foy, Educational Retirement Board

Rep. Justine Fox-Young

Robert Gish, Public Employees Retirement
Association

Sen. Stuart Ingle

Rep. Patricia A. Lundstrom

Rep. Kathy A. McCoy

Olivia Padilla-Jackson, Board of Finance

Sen. Leonard Lee Rawson

Sen. H. Diane Snyder

Rep. Joe M Stell

Work Plan

During the 2006 interim, the committee will focus on the following activities.

1. The committee will monitor the investment and financial management practices used by the state investment council, the state board of finance, the state treasurer, the public employees retirement association and the educational retirement board with respect to all public funds, including permanent funds and retirement funds.

2. The committee will undertake a continuing analysis of the financial and actuarial status of the retirement systems of the public employees retirement association and the educational retirement board.

3. The committee will develop recommendations as appropriate to improve state investment practices and to ensure the financial and actuarial soundness of the retirement funds.

4. The committee will refer matters needing further attention to the appropriate public official, agency or oversight board.

5. The committee will review proposed legislation affecting state investment practices, the permanent funds or the retirement funds prior to the legislative session in which the legislation will be introduced.

6. The committee will report to the legislature prior to the start of each regular legislative session any recommendations that the committee may have for legislative action.

2006 APPROVED MEETING SCHEDULE

<u>Date</u>	<u>Location</u>
September 6, 2006	Santa Fe
October 16-17, 2006	Santa Fe
November 6, 2006	Santa Fe
December 20, 2006	Santa Fe

Appendix B

Agendas and Minutes of Meetings

Revised: September 5, 2006

**TENTATIVE AGENDA
for the
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE**

**September 6, 2006
Room 322, State Capitol
Santa Fe**

Wednesday, September 6

- 10:00 a.m. **Call to Order**
- 10:05 a.m. **Summary of Fiscal Year 2005 Investment Performance**
—Gary Bland, State Investment Officer
—Frank Foy, Educational Retirement Investment Officer
—Bob Gish, Public Employees Retirement Investment Officer
- 10:35 a.m. **Legislative Finance Committee (LFC) Report of Investment Performance**
—Norton Francis, LFC
- 11:00 a.m. **Status of State Treasurer Financial Operations**
—Douglas Brown, State Treasurer
- 11:30 a.m. **Hedging of Oil and Gas**
—Olivia Padilla-Jackson, Director, New Mexico State Board of Finance
—David Paul, Financial Strategies Group, Inc.
—David Buchholtz, Brownstein, Hyatt & Farber, P.C.
—Jaimie Scranton, UBS Securities, L.L.C.
—Chris Brown, UBS Securities, L.L.C.
- 12:30 p.m. **Lunch**
- 1:30 p.m. **Retiree Health Care Authority (RHCA) — GASB Rule 45**
—Marie Thames, Executive Director, RHCA
- 2:00 p.m. **Work Plan and Meeting Schedule Development**
—Doug Williams, Researcher, Legislative Council Service
- 2:30 p.m. **Committee Discussion of October Agenda**
- 3:00 p.m. **Adjourn**

**MINUTES
of the
FIRST MEETING
of the
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE**

**September 6, 2006
State Capitol
Santa Fe**

The first meeting of the Investments and Pensions Oversight Committee for the 2006 interim was called to order by Representative John A. Heaton, chair, on Wednesday, September 6, 2006, at 10:00 a.m. at the State Capitol in Santa Fe.

Present

Rep. John A. Heaton, Chair
Sen. John Arthur Smith, Vice Chair
Rep. Miguel P. Garcia
Sen. Phil A. Griego
Rep. Larry A. Larranaga
Sen. Carroll H. Leavell
Rep. Luciano "Lucky" Varela

Absent

Rep. Donald E. Bratton
Sen. Joseph J. Carraro
Rep. Henry Kiki Saavedra

Advisory Members

Gary Bland, State Investment Council (SIC)
Frank Foy, Educational Retirement Board (ERB)
Robert Gish, Public Employees
Retirement Association (PERA)
Rep. Patricia A. Lundstrom
Rep. Kathy A. McCoy
Olivia Padilla-Jackson, State Board of Finance
Sen. Leonard Lee Rawson
Rep. Joe M Stell

Sen. Pete Campos
Sen. Carlos R. Cisneros
Sen. Joseph A. Fidel
Rep. Justine Fox-Young
Sen. Stuart Ingle
Sen. H. Diane Snyder

Staff

David Abbey, Legislative Finance Committee (LFC)
Michelle Bell, LFC
Doris Faust, Legislative Council Service (LCS)
Cleo Griffith, LCS
Larry Matlock, LCS
Norton Francis, LFC
Doug Williams, LCS

Guests

The guest list is in the meeting file.

Wednesday, September 6

Olivia Padilla-Jackson recommended that the committee receive a status report from the Governor's Ethics Reform Task Force at a future meeting.

Representative Larranaga recommended that the committee examine the structure of the retirement benefits paid by PERA and ERB.

Representative Varela recommended that the committee examine the composition of the ERB.

Senator Smith noted that the legislature has been attempting to restructure the ERB membership for the past two years. He recommended that the committee build a consensus during the interim.

Representative Heaton requested that Evalynne Hunemuller, executive director, ERB, bring the appropriate parties to the table to discuss the structure of the ERB.

Summary of Fiscal Year 2006 Investment Performance

- Gary Bland, State Investment Officer
- Frank Foy, Educational Retirement Investment Officer
- Bob Gish, Public Employees Retirement Investment Officer

Mr. Foy reported on the performance of the ERB as summarized in the following table:

	Performance Summary			
	1 Year Ending <u>6/30/06</u>	3 Years Ending <u>6/30/06</u>	5 Years Ending <u>6/30/06</u>	10 Years Ending <u>6/30/06</u>
Policy Index	10.7%	12.4%	6.2%	8.4%
Actual Earnings				
Total Fund	12.3%	12.5%	5.9%	7.9%
Total US Equity	10.2%	12.3%	3.3%	8.7%
Large Cap Equity	9.3%	11.2%	2.1%	NA
Small Cap Equity	15.3%	18.7%	7.7%	NA
International Equity	29.1%	24.7%	11.0%	NA
Total Fixed Income	0.7%	2.5%	5.4%	6.8%
Real Estate	21.9%	NA	NA	NA
Cash	4.9%	2.9%	2.7%	NA

Mr. Foy noted that since the passage of the Prudent Investor Act in 2005, the ERB has engaged a private equity fund manager and is in the process of selecting a hedge fund manager. The ERB has authorized allocating five percent of assets to each of the following alternative investments: private equity, real estate and hedge funds.

Representative McCoy asked about the criteria used to select a money manager.

Mr. Foy responded that the ERB examines the performance histories of potential managers and how well they adhere to their stated investment strategies.

Representative Larranaga asked about the process for selecting a hedge fund manager. Mr. Foy responded that the process is identical to the request for proposal (RFP) process used for traditional fund managers. There were 62 responses to the RFP, of which 22 were eliminated because they did not meet minimum requirements. Of the remaining 40, five finalists have been identified. Mr. Foy noted that the ERB will refer to hedge funds as an "absolute return" portfolio. Representative Larranaga asked if there was a last minute addition to the list of five finalists. Mr. Foy said all of the finalists were identified through the regular procurement process.

Representative Varela asked about the status of real estate investments. Mr. Foy indicated that an RFP for a real estate fund manager will be forthcoming in the next two to four months.

Representative Heaton requested that the ERB present a preliminary actuarial report at the next meeting of the committee.

Mr. Gish reported on the PERA investment performance. The results for fiscal year 2006 are summarized in the following table:

Performance Summary				
	1 Year Ending <u>6/30/06</u>	3 Years Ending <u>6/30/06</u>	5 Years Ending <u>6/30/06</u>	10 Years Ending <u>6/30/06</u>
Policy Index	11.74%	12.36%	7.58%	8.28%
Actual Earnings				
Total Fund	11.74%	12.35%	7.58%	9.90%
Total US Equity	11.01%	13.63%	5.58%	10.52%
Large Cap Equity	9.49%	12.36%	3.83%	8.83%
Small Cap Equity	15.32%	17.68%	10.54%	12.73%
International Equity	30.26%	25.75%	11.04%	11.54%
Total Fixed Income	0.02%	2.89%	5.30%	6.54%
Cash	4.46%	7.97%	6.57%	6.00%

Historically, PERA's best performance year was 2004. PERA was in the first percentile of similar large retirement funds. Relative standing has slipped to the twenty-second percentile because PERA was required to invest in accordance with a legal list. With the passage of the Prudent Investor Act, PERA believes that its relative standing will improve.

Representative Lundstrom asked if the alternative investments will help cover past shortfalls in investment performance. Mr. Gish responded that alternative investments alone are unlikely to cover shortfalls in the past, but will help in future market downturns.

Mr. Gish noted that last year PERA paid out \$90 million more in benefits and

other expenses than were received in contributions.

Representative Larranaga asked about the PERA policy with respect to hedge funds. Mr. Gish said that the PERA Board has authorized five percent of its assets to be allocated to hedge funds. Also, five percent of assets may be allocated to real estate and five percent to private equity investments. PERA has not yet selected any alternative fund managers or made any alternative investments.

It was noted that, overall, PERA is 93 percent funded. Representative Varela asked about the Volunteer Firefighters Fund and Terry Slattery, executive director, PERA, responded that the fund is more than 100 percent funded; however, it is very difficult to know the true liability because fire chiefs have not been good at reporting on active membership.

Representative Varela asked about the deferred compensation plan and requested that, at a future meeting, the committee receive a report from Nationwide regarding the plan. Mr. Slattery noted that Nationwide has five in-state representatives who held approximately 600 meetings with plan participants last year.

Mr. Bland reported on the SIC's performance in fiscal year 2006. He noted the following.

- For the 12 months ending June 30, 2006, the combined funds experienced a net investment gain of \$1.5 billion, easily outpacing the \$312.6 million in net distributions. The combined funds recorded a net investment loss of \$44.9 million for the quarter. Total assets declined from \$13.7 billion at the beginning of the quarter to \$13.6 billion at the quarter's end, with \$23.9 million in net distributions.
- For the five-year period, the Land Grant Permanent Fund (LGPf) returned 5.7 percent, exceeding its policy index by 0.2 percent. Over the same period, the Severance Tax Permanent Fund (STPF) lagged its policy by 0.4 percent, with a return of 5.4 percent.
- For the year, the LGPF returned 10.6 percent, exceeding its policy index by 0.8 percent, while the STPF trailed its policy by 0.1 percent with a return of 11.2 percent. Both funds surpassed their respective benchmarks for the quarter. LGPF returned -0.2 percent versus its policy return of -0.7 percent, and STPF returned -0.3 percent versus its policy return of -0.7 percent.
- Total equity exposures for the LGPF were 61.2 percent. The STPF's equity exposure was 60.5 percent, with a structural overweight to fixed income, while the private equity program is still being developed. All allocations are within policy limits.

Mr. Bland noted that, for those investments managed internally, the cost per trade is approximately two cents per share, which is significantly below the industry average. The total cost of managing the internal investments is five basis points.

Senator Rawson observed that SIC is underperforming ERB and PERA. He noted that the retirement funds have a large and growing liability, while SIC has a known liability fixed in law. He suggested that this situation would allow SIC to be more aggressive and earn higher returns than ERB or PERA. Mr. Bland observed that the SIC Board has adopted a conservative investment policy because: (a) the SIC has a known payout but an unknown income stream; and (b) SIC is guarding against repeating the losses experienced in 2001-2003.

Representative Larranaga noted that the legislature should be allowing more severance tax revenue to flow to the permanent fund.

Legislative Finance Committee Report of Investment Performance

-Norton Francis, LFC

Mr. Francis presented a combined report jointly prepared with the Department of Finance and Administration that summarizes the performance of the SIC, PERA and ERB. He noted that in the one-year period ending June 30, 2006, investment returns finished positive, despite giving up gains to a disappointing fourth quarter. ERB posted the highest return at 12.3 percent, followed by PERA at 11.74 percent; both funds beat their one-year benchmarks by 1.6 percent and 1.9 percent respectively. The STPF gained 11.2 percent for the year but trailed its policy target by 0.1 percent, while the LGPF returned 10.6 percent, beating its policy target by 0.8 percent.

For the five years ending June 30, 2006, PERA lead with the highest return at 7.58 percent, which beat its fund benchmark return of 6.12 percent by an impressive 1.5 percent. The ERB had the next highest return at 5.9 percent, but missed its target by 0.3 percent. The LGPF's return of 5.7 percent outperformed its target of 5.5 percent by 0.2 percent, and the STPF finished at 5.4 percent, missing its target by 0.4 percent. All the investment funds surpassed the five-year 60/40 index, which returned 3.8 percent.

Representative Stell asked how the \$40 million in the Water Trust Fund has come to be managed by the SIC even before the referendum. Ms. Padilla-Jackson responded that the \$40 million was a general fund appropriation, not bond proceeds requiring approval of a referendum by the voters, and it was appropriated to the New Mexico Finance Authority (NMFA) for use by the Water Trust Fund. The NMFA does not engage in long-term investments and, therefore, SIC manages the assets for the NMFA.

Representative Larranaga requested a report on the SIC film investments at a future meeting.

Status of State Treasurer Financial Operations

-Douglas Brown, State Treasurer

Mr. Brown presented a report on the status of the State Treasurer's Office. He noted that, in November 2005, the State Treasurer's Office had more than 5,000 deposits worth \$160 million that were not reconciled; had minimal investment procedures/transactions disclosure or transparency; was an unstructured agency with little

accountability or checks and balances, where building and computer security were compromised; and had unqualified people in key agency positions.

Improvements have been made in both office administration and investment procedures, notably:

- accounts reconciliation is 100 percent complete through June 30, 2006;
- the agency has been restructured with more accountability;
- building and computers are secured;
- necessary personnel changes have been made;
- a compliance officer has been added;
- new internal policies have been implemented, including:
 - code of conduct;
 - campaign contributions prohibitions; and
 - whistleblower procedures;
- the investment policy has been improved with over 300 revisions;
- the electronic trading platform has lowered commissions by over 50 percent;
- more competition and transparency on investment trades;
- full disclosure of all investment transactions;
- open meetings of State Treasurer's Investment Committee;
- an expanded broker/dealer list;
- New MexiGROW LGIP AAAM rated by S&P;
- New MexiGROW LGIP yield - 3.2 percent in 2005, 5.2 percent currently; and
- the General Fund shows monthly earnings of \$5 million in January 2006 and \$12 million in July 2006.

Mr. Brown noted that to improve accountability of the state treasurer, he is recommending that the state treasurer be an appointed position. The state treasurer might be appointed by the legislature. This would make removal from office much easier than the impeachment process.

New Mexico now has a AAA Local Government Investment Pool rating from Standard & Poors and is one of only 12 states to have such a rating.

Mr. Gish asked about past audit exceptions. Mr. Brown said that, in fiscal year 2004, there were no exceptions and that, in 2005, there were 16 exceptions. Mr. Brown noted that two or three exceptions is the most that there should ever be.

Hedging of Oil and Gas

- Olivia Padilla-Jackson, Director, State Board of Finance
- David Paul, Financial Strategies Group, Inc.
- David Buchholtz, Brownstein, Hyatt & Farber, P.C.
- Jaimie Scranton, UBS Securities, L.L.C.
- Chris Brown, UBS Securities, L.L.C.

Ms. Padilla-Jackson introduced a presentation on hedging oil and gas prices. Representatives of UBS Securities, L.L.C. (UBS) noted that New Mexico budget revenue

could fluctuate significantly with market prices; however, using risk management tools to "lock in forward energy prices" can reduce volatility in budget revenue and that current market prices provide an opportunity to lock in prices above the budgeted prices.

Locking in commodity revenues will:

- generate significant excess budgetary revenues for the state;
- limit exposure to falling gas prices; and
- provide a guaranteed revenue stream for the General Fund or Severance Tax Bonding Fund.

Excess revenues could be appropriated for the fiscal year to programs such as:

- school funding;
- water needs;
- local transportation needs;
- alternative energy funding;
- transportation revolving funds; and
- economic development.

However, no funding source is without risk. While providing budgetary financial certainty for a portion of oil and gas revenues above current estimates, if gas prices spike over the swap term, the state would not capture full benefit of these price increases.

Risk may be reduced through three market instruments: a swap, floor or collar. A swap locks in a guaranteed revenue stream for the state prior to the fiscal year start, which allows:

- excess budgetary revenues to be spent in the current fiscal year;
- funds to flow into the General Fund to be used for various purposes; and
- the cost of the swap to be included in the pricing of the transaction and not be paid up-front.

The state can execute a floor to minimize its exposure to commodity prices below budgeted levels. While a floor eliminates downside risk, it would also allow the state to participate in the full extent of any spikes in commodity prices; however, the state would pay an up-front fee to receive the protection of the floor. A floor would not provide budgeting certainty to the state; therefore, it could not budget for increased revenue receipts prior to actual receipt.

A collar establishes a band of prices within which prices can fluctuate with no payments by either party. While a collar provides greater budget certainty than remaining fully exposed to commodity price, it would not allow the state to pre-establish a price. Therefore, it would not allow for revenue increases versus budget and may only be available for a narrow band on a costless basis, depending on market rates.

The following table outlines the advantages and disadvantages of each financial instrument.

Instrument	Advantages	Disadvantages
Swaps	"Locks In" Budget	No Participation in High-Price Environment
	No Up-Front Premium	Possible Margin Requirement
Floor	Protects Budget in Low-Price Environment	Significant "Up-Front" Cost
	Retains "Upside" in High-Price Environment	No Margin Requirement
Collar	Lower "Up-Front" Cost; Some Participation in High-Price Environment	Less "Up-Front" Cost
	Takes Advantage of Asymmetrical Price Volatility Curve	Possible Margin Requirement

The largest risks to the state in locking in commodity prices are:

- price risk - the risk that prices increase above swap levels, therefore limiting New Mexico's ability to participate in higher market levels;
- basis risk - the risk that New Mexico's commodity prices and the locked prices do not correlate;
- production risk - the risk that New Mexico's level of commodity production will be above or below the amount locked in; and
- counterparty risk - the risk that the entity facing the state on the transaction did not perform on the trade.

UBS has reviewed the state's production and sales/pricing data and compared it to market data. UBS believes that given a historic statistical analysis, the state can effectively mitigate the majority of these risks through a customized swap program.

Mr. Buchholtz stated that legislation would be required to permit the state to move forward with hedging of oil and gas prices.

Representative Varela asked if the UBS revenue estimates have been examined by the state economist. Ms. Padilla-Jackson stated that the estimates have not yet been reviewed; however, she would be pleased to have them reviewed and have the state economist report to the committee.

Representative Heaton invited the group to return at the committee's final meeting to present proposed legislation.

Mr. Abbey suggested that any hedging be based on Henry Hubb prices not Permian Basin prices in order to eliminate basis manipulation.

Retiree Health Care Authority (RHCA) - GASB Rule 45

-Marie Thames, Executive Director, RHCA

Ms. Thames explained that Government Accounting Standard Board (GASB) Rule 45 requires that the RHCA publish any unfunded liability in its annual report.

RHCA has hired an actuarial firm, and it is currently working on the issue of complying with GASB 45. A very preliminary estimate is that RHCA may have a \$1 billion unfunded liability. Also, at present, it is projected that the unfunded liability might be retired over the next 25 years.

GASB 45 also requires that the future flow of funds may not be used by actuaries in calculating an unfunded liability unless the corpus of the fund is held as an irrevocable trust.

Representative Varela asked about the penalty for not complying with GASB 45. Ms. Thames indicated that failure to comply could result in a lower bond rating for the state.

Ms. Griffith suggested that the RHCA return to the committee at a future meeting with proposed legislation.

Work Plan and Meeting Schedule Development

-Doug Williams, Researcher, LCS

The committee approved the proposed work plan and chose future meeting dates as follows.

October 16-17, 2006

November 6, 2006

December 20, 2006

Committee Discussion of October Agenda

The committee decided that it wants the following items addressed at future meetings:

- conflict of interest;
- composition of the boards of PERA, SIC and ERB;
- status of the Water Fund Trust;
- deferred compensation;
- NMFA investments;
- review of retirement benefits;
- list of special funds;
- recommendations of the Governor's Ethics Reform Task Force; and
- proposed changes in retirement benefits.

Other Business

There was no other business brought before the committee.

The committee adjourned at 4:15 pm.

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Revised: October 13, 2006

**TENTATIVE AGENDA
for the
SECOND MEETING
of the
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE**

**October 16-17, 2006
Room 322, State Capitol
Santa Fe**

Monday, October 16

- | | |
|--------------------------------|--|
| 9:30 a.m. | Call to Order |
| 9:35 a.m.
Conflict | Recommendations of the Governor's Ethics Commission: Gifts and of Interest
—Stuart Bluestone, Office of the Attorney General |
| 11:00 a.m.
Controls, | New Mexico Finance Authority (NMFA) Investments: Internal Conflict of Interest
—John Duff, Chief Investment Officer, NMFA |
| 11:30 a.m. | Status of the Water Trust Fund and the Water Project Fund
—Mark Valenzuela, Director of Intergovernmental Relations, NMFA |
| 12:00 noon | Lunch |
| 1:00 p.m. | Governor's Water Initiative
—Estevan Lopez, Deputy State Engineer |
| 2:00 p.m. | Motor Transportation Division, Department of Public Safety (DPS): Change in Retirement Plan
—Richard Newman, Adjutant Chief, DPS
—Ron Cordova, Captain, DPS |
| 3:00 p.m. | District Attorneys: Change in Retirement Plan
—Randy Saavedra, Director, District Attorneys |
| 4:00 p.m. | Recess |

Tuesday, October 17

9:30 a.m. **Call to Order**

9:35 a.m. **Review of Retirement Benefits: Public Employees Retirement Association (PERA), Educational Retirement Board (ERB)**

—Terry Slattery, PERA, Executive Director

—Paul Swanson, ERB

11:00 a.m. **Proposed Study of PERA Calculations — House Memorial 34, 2006 Session**

—Sheila Pugach

11:30 a.m. **Adoption of September 6, 2006 Minutes**

12:00 noon **Lunch**

1:00 p.m. **Deferred Compensation Overview**

—Kurt Weber, Deputy Director, PERA

—Jim Keeler, Nationwide Investment Services

2:00 p.m. **University Campus Police: Change in Retirement Plan**

—Steven Lopez, Deputy Chief

3:00 p.m. **Committee Discussion of Topics for the November Agenda**

—Doug Williams

Suggested topics:

- Composition of the Boards of ERB, PERA and State Investment Council (SIC)
- ERB Actuarial Status (Evalynne Hunemuller)
- Student Managed Investment Program (SIC)
- Economic Investments (SIC)
- Juvenile Correctional Officers: Retirement Benefit Enhancement
- Adult Correctional Officers: Retirement Benefit Enhancement
- 911 Communications Workers: 20-Year Retirement

3:30 p.m. **Public Comment**

4:00 p.m. **Adjourn**

**MINUTES
of the
SECOND MEETING
of the
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE**

**October 16-17, 2006
State Capitol
Santa Fe**

The second meeting of the Investments and Pensions Oversight Committee for the 2006 interim was called to order by Representative John A. Heaton, chair, on Monday, October 16, 2006, at 9:30 a.m. at the State Capitol in Santa Fe.

Present

Rep. John A. Heaton, Chair
Sen. John Arthur Smith, Vice Chair
Rep. Donald E. Bratton
Sen. Joseph J. Carraro
Rep. Miguel P. Garcia
Sen. Phil A. Griego
Rep. Larry A. Larranaga
Sen. Carroll H. Leavell
Rep. Henry Kiki Saavedra
Rep. Luciano "Lucky" Varela

Absent

Advisory Members

Douglas Brown, State Treasurer
Frank Foy, Educational Retirement Board
(ERB)
Robert Gish, Public Employees
Retirement Association (PERA)
Sen. Stuart Ingle
Rep. Patricia A. Lundstrom
Rep. Kathy A. McCoy
Olivia Padilla-Jackson, State Board of
Finance
Rep. Joe M Stell

Gary Bland, State Investment Council
Sen. Pete Campos
Sen. Carlos R. Cisneros
Sen. Joseph A. Fidel
Rep. Justine Fox-Young
Sen. Leonard Lee Rawson
Sen. H. Diane Snyder

Staff

Michelle Aubel, Legislative Finance Committee (LFC)
Doris Faust, Legislative Council Service (LCS)
Norton Francis, LFC
Cleo Griffith, LCS
Larry Matlock, LCS
Doug Williams, LCS

Guests

The guest list is in the meeting file.

Monday, October 16

Recommendations of the Governor's Ethics Reform Task Force; Gifts, Conflict of Interest

—Stuart Bluestone, Office of the Attorney General

The governor's original instructions were for the task force to consider ethics in general, not just campaign finance reform.

The proposed state ethics commission would have the power to investigate and recommend action to the employer. The legislative branch would continue to discipline its own members through the impeachment process. The judicial branch already has an ethics review process.

The commission would consist of eight members supported by a full-time staff with an executive director. Four commission members would be appointed by the governor and the remaining four would be appointed by the House and Senate minority and majority leaders. No more than four members may be from the same political party. Five votes would be needed to take action, thus ensuring bipartisan support.

Thirty-nine other states already have an ethics commission. Creation of a New Mexico ethics commission would enhance the oversight of investments and pensions.

The Governor's Ethics Reform Task Force developed recommendations with respect to the following:

1. Establishment of a state ethics commission.

The establishment of an independent state ethics commission will promote increased accountability for ethical behavior among state officials and employees, lobbyists and those that conduct business with the state. The threat of investigation of unethical conduct and sanctions for such conduct could serve as a deterrent for unethical practices in state government. It could also ensure that appointing authorities are made aware of unethical practices of officials and employees and lead to removal of unethical individuals from public service positions. The provision of training sessions and educational materials such as a plain language ethics guide and a business ethics guide would additionally educate state officials and those that conduct business with the state as to what constitutes ethical and unethical behavior. Individuals with such training are less likely to engage in behavior that raises ethical questions. Thus, the training provided by the state ethics commission could protect both public servants and the state agencies by which they are employed.

2. Limitation of the receipt of gifts by state officials.

- Prohibit gifts with a fair market value greater than \$250, unless the gift is accepted on behalf of the state of New Mexico.
- Establish a \$1,060 cap on gifts from a lobbyist, a lobbyist's employer or government contractor to any one recipient who is a state official or state employee.
- Establish reporting requirements for gifts that exceed \$100 in value and ban gifts exceeding that value during legislative sessions.
- Ban gifts to charities designated by state officials in their official capacities.
- Provide criminal penalties for the donation or acceptance of gifts in violation of the new prohibitions.

Although legislators, state officers and state employees are prohibited from receiving anything of value in exchange for performance of an official act, there is no general prohibition of gifts or requirement for disclosure of gifts in New Mexico. Clear designations as to when gifts are not acceptable and additional reporting requirements with respect to gifts provided by lobbyists and lobbyists' employers would provide a necessary foundation for the effective regulation of lobbying and campaign finance. Such designations and requirements would also simplify compliance and ultimately increase public confidence in government. Moreover, clear limitations or even outright bans on gifts have been enacted in most states. The enactment of clear limitations on gifts in New Mexico and additional reporting requirements will ensure that this state is also adapting to the national trend toward limiting the potentially corrupting influence of gifts.

3. Establishment of campaign contribution limits and increased campaign reporting requirements.
 - Limit contributions to candidates for statewide office to the federal contribution limit for individuals, currently \$2,100.
 - Limit contributions to candidates for districtwide offices to one-half of the federal contribution limit for individuals, currently \$1,050.
 - Prohibit cash contributions of more than \$100.
 - Strengthen campaign reporting requirements and enforcement.

New Mexico is one of a minority of 13 states that do not limit most campaign contributions. The United States Supreme Court has recognized that campaign contribution limits may serve a state's compelling interest in preventing corruption and the appearance of corruption in the political process. The United States Supreme Court has also concluded that reasonable contribution limits do not violate the United States Constitution. Contribution limits could further limit the influence of large donations, which might breed undue influence and erode public confidence. Thus, the task force agreed that reasonable contribution limits should be placed on contributions to candidates. The task force found that federal limits would constitute reasonable limits and ensure constitutional compliance.

4. Provision of legislative compensation.
 - Provide for legislative expense reimbursement accounts in an amount not to exceed \$10,000 annually.

- Prohibit the use of campaign funds for legislative purposes.

Because legislators do not receive compensation for the costs incurred in the performance of their duties, they are faced with a dilemma. They must either personally absorb the costs of serving constituents, or use campaign funds to pay those costs. If campaign funds are used for the costs of serving constituents, the potential for corrupting influence might exist. Legislators might become dependent on funds given to them by third parties that promote special interests. On the other hand, task force members agreed that legislators should not be expected to personally absorb the costs of serving constituents. This expectation might also discourage diverse populations from running for legislative office because only more affluent candidates capable of absorbing the costs of legislative office can afford to serve. To reduce the potential influence of third parties in the legislative process and to provide legislators with some means of reimbursement for the expenses that they personally pay, the task force agreed to seek repeal of the section of law that permits the use of campaign funds for legislative expenses and to request provision of a legislative expense reimbursement account in the amount of \$10,000 annually to each legislator. The task force's recommendation to prohibit the use of campaign funds for legislative purposes is contingent upon the provision of legislative expense reimbursement accounts. Both recommendations are contingent upon the provision for increased campaign contribution limits contained in this recommendation report.

5. Establishment of appointive offices and minimum qualifications for the state treasurer and state auditor.

- Make the office of the state treasurer an appointive office.
- Make the office of the state auditor an appointive office.
- Require the state treasurer to have certain minimum qualifications.
- Require the state auditor to have certain minimum qualifications.

If the state treasurer and state auditor engage in unethical practices, they can only be removed from office by impeachment, which is a drastic, time-consuming and burdensome process. If the offices of state treasurer and state auditor become appointive, however, the appointing authority would have the power to remove those officials expeditiously, and sooner prevent the officials from engaging in additional unethical practices. The threat of removal by the appointive authorities might also serve as a deterrent to unethical behavior. In addition, the appointing authority could be held accountable for its appointment decisions. Finally, appointment can allow for the establishment of minimum qualifications for the offices of the state treasurer and state auditor. Minimum qualifications can ensure that these officials are professionals who understand the functions of the offices that they are running and who are capable of competent, ethical and professional service to the people of New Mexico.

6. Publicly financed elections.

- Provide for public financing of all statewide and contested judicial court elections.

Public financing of campaigns has been credited with reducing the adverse effects

of money on the political system, increasing the number and diversity of candidates for state office, reducing the need to divert attention to fundraising activities and encouraging candidates to directly contact all classes of voters. States that have successfully implemented public financing systems include Arizona, Connecticut, Maine, New Jersey and North Carolina. Public financing systems have also taken effect in New Mexico. In 2003, the legislature passed, and the governor signed, the Voter Action Act, creating public financing for Public Regulation Commission races. Additionally, in 2005, Albuquerque voters approved a ballot referendum to develop a system of public financing for future mayoral and city council races.

Representative Lundstrom asked about reporting gifts during the legislative session. It was noted that there would be no reporting of gifts during the session, provided that no one gift exceeds \$100.

Representative Bratton asked about abuse by 527 organizations, large group functions (dinners, etc.) that do not target one specific legislator and the governor receiving free transportation on a jet aircraft.

Senator Leavell also asked about the governor traveling at someone else's expense.

Mr. Bluestone stated that the task force considered the same issues raised by Representative Bratton and Senator Leavell. He said that the task force is only making recommendations and that the exact wording of legislation would be up to the legislature in January.

Representative McCoy stated that a person who wants to "beat the system" will always find a way. She feels that there are too many restrictions being proposed for otherwise honest people.

Representative Saavedra stated that state officials need to go slow when enacting limitations on gifts. He is not enthusiastic about all the reporting requirements because a crook will still be a crook.

New Mexico is one of only 13 states that have no campaign contribution limits.

Representative McCoy wants real ethics reform, not just the perception of reform. She is concerned that corrupt people will figure a way to take money illegally. Also, she believes that contribution limits must be linked to legislator compensation, i.e., there should not be limits until there is a system of compensation in place.

Mr. Brown endorsed the recommended change to appointing the state treasurer and auditor of accounts.

Representative Lundstrom would like to be certain that any ethics reform that applies to legislators also applies to the governor and judges.

Representative Larranaga is concerned about the board of the ethics commission being truly independent. He cited the boards of transportation, retiree health care and university regents as all being dependent on the governor. He noted that only the board of PERA is relatively independent because some members of the board are elected by members of the PERA system.

Representative Larranaga asked if the task force explored the subject of term limits. The task force did not.

Representative Bratton stated that he knows of a recent example of a board member who was told that if he did not support the governor's position, he would be removed from the board.

Representative Garcia believes that the proposed ethics commission should be prohibited from investigating anything that has to do with the exercise of freedom of speech. He also wants a complete ban on contributions from contractors. Mr. Bluestone stated that the task force has made its recommendations and that it is up to the legislature to accept, modify or add items and then enact them.

New Mexico Finance Authority (NMFA) Investments; Internal Controls, Conflict of Interest

—John Duff, Chief Investment Officer, NMFA

The NMFA has a very conservative approach to managing investments.

- The NMFA obtains funds by issuing tax-exempt bonds and then loans the bond proceeds to cities, counties and other departments of state government.
- The NMFA holds the bond proceeds for a relatively short time. Funds are often disbursed immediately after a bond issue, and, in any event, are required by the United States Treasury regulations to be expended in three years or less.
- NMFA must deliver the agreed-on loan amount to its borrower and cannot accept the risk of investments that have fluctuating market values, such as stocks. The NMFA avoids this risk by investing in fixed-income (bond) types of investments that will mature with a predetermined value. NMFA matches the maturities of its investments to the timing of its cash disbursement requirements.

Permitted investments for the NMFA are defined by Section 6-10-10 NMSA 1978 and are the same as permitted for the New Mexico state treasurer and county treasurers. Permitted investments include:

- certificates of deposit (with any amounts not insured collateralized with United States government securities);
- AAA-rated money market mutual funds;
- United States Treasury securities;
- United States government agency securities;
- the state treasurer's LGIP fund; and

- repurchase agreements and other types of guaranteed investment contracts (with the investment amount collateralized by United States government securities).

The investment policy statement contains important provisions to prevent conflicts of interest and ensure that the best investment management practices are followed.

- Competitive bids are required for the purchase or sale of all investments (a minimum of three; in practice, more are usually obtained).
- For securities purchases and sales, the institutional trading desks of broker/dealers are dealt with directly. (NMFA does not deal with individual brokers who would be paid commissions.)
- NMFA has a list of approved broker/dealers with whom it transacts securities purchases and sales. The list is reviewed and approved annually by its Investment Committee.
- NMFA has an Investment Committee, a subcommittee of its board of directors, which meets monthly to review and evaluate individual transactions, overall investment philosophy and our assessment of market conditions. The Investment Committee reports monthly on the investment program to the board of directors.
- NMFA retains a consultant, First Southwest Asset Management, to independently review its portfolio and report monthly directly to the Investment Committee. First Southwest participates in every Investment Committee meeting and is available to consult with NMFA management on investment issues on a day-to-day basis.
- The NMFA retains an internal auditor to examine its investment transactions (and other aspects of NMFA operations) on a regular basis. The auditor is an independent contractor who is selected on a competitive request for proposal (RFP) basis.
- Independent auditors examine NMFA investment transactions annually.

NMFA procurement policies, which are virtually identical to state policies, require that all professional advisors, such as First Southwest Asset Management, are selected on a competitive RFP basis. (First Southwest was selected in such a process.)

NMFA personnel policies prohibit an employee from accepting gifts of any sort and of any value from any person or company doing business or seeking to do business with the NMFA.

Representative Larranaga asked about bond ratings in the context of the risk level of NMFA borrowers. Mr. Duff stated that NMFA charges different interest rates to its borrowers depending upon their credit rating and the rating agencies take into account the risk of loan repayment when establishing the rating of any particular bond issuance.

Representative Larranaga asked about compliance with arbitrage requirements. Mr. Duff said the NMFA retains an outside consultant that monitors its disbursements to ensure compliance.

Representative Larranaga asked about the composition of the NMFA board. Mr. Duff stated that all of the members are appointed by the governor.

Ms. Padilla-Jackson encouraged NMFA to use electronic trading in order to improve transparency of investments. Mr. Duff stated that NMFA now uses the Bloomberg system of electronic trading.

Status of the Water Trust Fund; Water Project Fund

—Jana Egbert, NMFA, Senior Program Administrator

The 2001 legislature, through the Water Project Finance Act, created the Water Trust Board, a 15-member board empowered to assist the New Mexico Legislature in prioritizing and funding water projects statewide. In creating the Water Project Finance Act, the legislature made the following findings:

- New Mexico is in a desert where water is a scarce resource;
- the economy depends on reasonable and fair allocation of water for all purposes;
- the public welfare depends on efficient use and conservation of water;
- New Mexico must comply with its delivery obligations under interstate compacts; and
- public confidence and support for water use efficiency and conservation are based on a reasonable balance of investments in water infrastructure and management.

The legislature stated that the purpose of the act is to provide a financing mechanism to promote water use efficiency, water resource conservation and protection, and fair distribution and allocation of water to all users. To this end, the act created the Water Trust Fund and the Water Project Fund to provide the necessary financial framework and created a 15-member Water Trust Board. The Water Trust Fund was created in the State Treasurer's Office to be invested by the state investment officer in a manner similar to land grant permanent funds. Money in the Water Trust Fund may not be expended for any purpose, except for an annual distribution made to the Water Project Fund. On July 1, 2006, the Water Trust Fund received a \$40 million general fund appropriation.

The Water Project Fund was created in the NMFA, which provides staff support to the Water Trust Board and makes loans or grants to qualified entities for projects prioritized by the board, approved by the legislature and on terms and conditions established by the Water Trust Board and the NMFA Board of Directors. The NMFA is authorized to recover from the fund the costs of administering the fund and originating loans and grants.

The Water Trust Board is charged with prioritizing projects for recommendation to the legislature for financing from the Water Project Fund and the Water Trust Fund and adopting rules and regulations governing the terms and conditions of grants or loans made from the Water Project Fund. By statute, the Water Trust Board may fund four types of projects:

- storage, conveyance and delivery of water;
- implementation of the federal Endangered Species Act collaborative programs;
- restoration and management of watersheds; and
- flood prevention.

The 2003 legislature, through House Bill 200, transferred the \$5 million appropriation for dam rehabilitation projects statewide from the Water Project Fund to the Office of the State Engineer. The transfer occurred during fiscal year 2004 and all pending dam rehabilitation project applications made to the Water Trust Board were given to the Office of the State Engineer. One of the most significant events in fiscal year 2003 was the passage of House Bill 882, which dedicates 10 percent of the severance tax bond (STB) proceeds to the Water Project Fund for use by the Water Trust Board to fund water projects statewide. The legislation requires that, by January 15 of each year, the Board of Finance Division of the Department of Finance and Administration shall estimate the amount of bonding capacity available for STBs to be authorized by the legislature. In expectation of this funding capacity, the Water Trust Board solicited letters of interest from projects wishing to apply to the Water Trust Board for this funding.

The 2005 legislative session also produced another piece of legislation that could impact the board. House Bill 1110 will transfer 10 percent of the Water Trust Board funding to the state engineer for water rights adjudication. Twenty percent of the money dedicated for water rights adjudications will be allocated to the Administrative Office of the Courts for the courts' costs associated with those adjudications. The Office of the State Engineer and the Administrative Office of the Courts will use this funding to address the backlog of cases. However, after enactment, several concerns about the structural issues of the legislation were raised. As such, implementation for HB 1110 has been postponed for one year.

The State Board of Finance informed the Water Trust Board in the spring 2006 that \$27,926,527 was available for funding water projects, including the 10 percent set-aside to fund adjudication for 2005 and 2006. All available funds were fully allocated for the projects in fiscal year 2005 for 19 projects statewide. The Office of the Attorney General opined this appropriation was valid and not discretionary. NMFA staff recommend to the Water Trust Board in the April 26, 2006 board meeting that both 2005 and 2006 adjudications be deducted from the available 2006 STB proceeds. The remainder of the funds, \$23,361,734, was used to fund 25 of the legislative-approved projects in the form of a grant and loan combination (see Tables 2 and 3).

In 2006, the Water Trust Board changed its practice of providing only grant funding for projects. NMFA staff, at the direction of the Water Trust Board, started evaluating potential loan and grant criteria that are fair to all eligible entities under the Water Project Finance Act. A simple formula for all projects that could be easily understood by all stakeholders was developed by NMFA staff with the consideration of the diversity of the nature of the entities and the services provided to their constituents. A two-step implementation process was approved whereby all projects in 2006 would be

structured as 90 percent grant, 10 percent no-interest loan (with a modest administrative fee of one-fourth percent); in 2007, the formula will be adjusted to 80 percent grant, 20 percent loan for all projects. These loans would not impair existing and planned debt by securing the loans with a subordinate pledge of the net system revenues of the entity. The loans would be 10 to 20 years in term, with no penalty for any prepayments, with longer maturities available for dam rehabilitation, water delivery and water reuse and conservation projects, and shorter terms available to watershed restoration and federal Endangered Species Act collaborative projects. As a final point, given the unpredictable nature of the revenues for many entities, the loans would be structured to allow hardship waivers of annual principal payments for those entities unable to meet their debt service as determined by the Department of Finance and Administration.

The Water Trust Fund will distribute \$4 million annually to the Water Project Fund until such time as 4.7 percent of the five-year average ending fund balance exceeds \$4 million, and then the distribution will be 4.7 percent of that average ending balance.

Senator Carraro asked about the criteria used to make loans versus grants. Ms. Egbert stated that currently all projects are funded 10 percent as a loan and 90 percent as a grant. The entire project is subject to a one-fourth percent administrative fee and the loan is at zero percent interest.

Governor's Water Initiative

—Estevan Lopez, Deputy State Engineer

—Bill Hume, Director of Policy Issues

Since taking office, the governor has focused more than \$74 million in key federal and state funding on urgently needed water projects in communities throughout New Mexico, particularly in rural areas. Governor Richardson directed more than \$30 million in emergency federal aid to community water projects, along with supporting and approving nearly \$44 million in capital outlay funding for similar projects. This year, the governor supported and signed into law legislation to improve the state's control over water use, recovery and conservation efforts. This legislation:

- expanded the use of the state's Corrective Action Fund to allow the New Mexico Department of Environment to use a portion of funding to protect and improve the quality of New Mexico's water and to facilitate cleanup of ground water sources; and
- gives the state engineer authority over the use of surface water for livestock purposes and eliminates loopholes and gaps that allow improper use of water, such as raising fish under "stock tank" regulations.

Senator Carraro asked about an inventory of the San Juan. Mr. Lopez stated that a complete analysis of the San Juan has been finished in conjunction with the Navajo water settlement agreement. It has been determined that there is sufficient water to meet New Mexico's obligations.

Representative McCoy indicated that more money should be allocated for adjudication of water rights so that state officials know the total amount of water in New

Mexico.

Representative Garcia asked for an example of "best water practices". Mr. Hume stated that desalinization and purification of wastewater are two examples.

Representative Larranaga asked about the governor's plan to augment the Water Trust Fund. Mr. Hume stated that the governor is proposing to add \$25 million to the existing \$40 million trust fund that was appropriated in the 2006 session.

Representative Larranaga asked about public-private partnerships. Mr. Lopez indicated that the Salt Basin Project is an example of public-private partnership.

Representative Lundstrom asked for a report from the state engineer on the use of the \$10 million for demonstration projects.

Department of Public Safety (DPS); Motor Transportation Division; Change in Retirement Plan

—Richard Newman, Adjutant Chief, DPS

—Ron Cordova, Captain, DPS

The DPS is comprised of three law enforcement entities: the New Mexico State Police Division, the Motor Transportation Division and the Special Investigations Division. While all three divisions have specific law enforcement missions, all three are comprised of certified law enforcement officers and all three have officers serving the state in hazardous duty assignments. Members of only one division, the New Mexico State Police Division, have a 25-year enhanced retirement system, which is a system that has become standard for law enforcement officers across the state. The Motor Transportation Division and the Special Investigations Division have requested coverage under the State Police Member and Adult Correctional Officer Member Coverage Plan I retirement plan.

This would not only improve the morale within the department, it would greatly assist the divisions in both recruitment and retention. Currently, the Motor Transportation Division and the Special Investigations Division have vacancy rates that are higher than that of many state agencies. There is difficulty attracting personnel to the divisions, and they are losing talent to other law enforcement agencies because of the lack of a 25-year enhanced retirement system. If approved, there will be a total of 150 officers within the Motor Transportation Division and 37 members of the Special Investigations Division affected by the change. There is an actuarial study being conducted at this time in order to determine the fiscal impact of such a move. The actuarial study should be completed by next month. If approved, DPS anticipates the change would take place in July 2007 and would affect both current and new employees.

The police officers of the Motor Transportation Division and the Special Investigations Division are seeking a 25-year enhanced retirement plan as are the regular state police. The 25-year enhanced plan means that an officer can retire at 20 years and 10 months with 75 percent pay.

Mr. Newman stated that an actuarial impact has been requested from PERA.

It was noted that the Special Investigations Division currently has 37 employees and a 40 percent vacancy rate. The Motor Transportation Division has a 14 percent vacancy rate and 149 officers. The assertion is that recruitment and retention could be improved with the retirement plan enhancement.

Representative Saavedra stated that he would like the actuarial report from PERA before making a decision on support of the request. He also noted that 20 years is long enough to work as a law enforcement officer.

District Attorneys; Change in Retirement Plan

—Randy Saavedra, Director, District Attorneys

There is a problem with retention of district attorneys that results in inexperienced district attorneys going to court with experienced defense attorneys. Also, there is a great deal of stress associated with the job, similar to that in firefighting and law enforcement.

Senator Griego asked about how many attorneys actually stay until retirement. Mr. Saavedra stated that only about 5 percent of attorneys stay until retirement. He believes that a 20- year retirement plan would be an incentive to stay, although the stress of the job would not change.

Representative Saavedra stated that it is advantageous to have experienced district attorneys to counter experienced litigators.

Representative Lundstrom requested that actuarial studies be made available to the committee members.

Representative Bratton stated that the committee is attempting to approach changes in retirement plans in an organized fashion that ensures equity and fiscal responsibility.

Representative Larranaga asked how many district attorneys would receive the enhanced retirement benefit. Mr. Saavedra stated that 206 attorneys are involved. He also noted that they have a 33 percent turnover rate.

Tuesday, October 17

Review of Retirement Benefits; PERA and ERB

—Terry Slattery, PERA, Executive Director

The current status of the pension plan was summarized as follows:

- \$10.2 billion in assets as of 6/30/05;
- \$11.3 billion in assets as of 6/30/06, a gain of \$1.1 billion for the fiscal year;

- 91.7 percent funded ratio as of 6/30/05;
- 9.85 percent investment return as of 6/30/05, exceeding eight percent benchmark;
- 11.74 percent investment return as of 6/30/06;
- PERA's investment performance has placed PERA in the top 22 percent of large public pension funds throughout the United States.
- total investment earnings over the past 10 years exceeded \$7.38 billion (based on invested assets of \$3.92 billion as of 6/30/1996) with an annualized return of 9.9 percent over the 10-year period, placing PERA in the top 6 percent of public funds for the 10-year period;
- in the 2006 legislative session, the legislature gave PERA the authority to expand the types of investments with the goal of maximizing investment opportunities. These expanded investment opportunities will change the way PERA has traditionally invested trust fund money;
- in September 2006, the PERA board approved allocations to an energy fund and a private equity fund. Allocations will continue to be considered by the Board until the overall 15 percent of the portfolio target is reached. It is anticipated this process will take approximately three years to complete;
- PERA has reached a level of maturity as a pension plan where employee and employer contributions no longer generate enough cash flow to fund the increasing number of PERA retirements; and
- PERA's investment income makes up the shortfall between employee and employer contributions to pay retiree and beneficiary pensions.

PERA administers 31 different retirement plans for state, municipal, judicial, magistrate, legislative and volunteer firefighter members. As of June 30, 2005:

PERA Active Members	47,711
—Average Age	42.6 years
—Average Service Credit	7.9 years
—Average Annual Salary	\$33,700
PERA Deferred Vested Members	3,265
PERA Retired Members	21,396
—Average Annual Pension Amount	\$20,431
—Average Retiree Age	65.1 years
—Average Age at Retirement for State General	57.7 years
—Average Age at Retirement for State Police	51.5 years

Regarding retirees returning to work:

- in 2003, the legislature passed legislation allowing retirees to return to work and receive both a pension and a salary;
- approximately 1,500 retirees have returned to work under these provisions, or approximately 6.25 percent of PERA's retired members;
- as of December 31, 2006, a retired member who has returned to work will no longer be required to pay nonrefundable employee contributions after earning \$25,000 in salary;
- as of January 1, 2007, the employer will be responsible for paying the full

- actuarial cost of hiring retirees to fill positions;
- PERA's actuary observed that, in general, experience indicates that members are retiring at significantly higher rates than currently assumed during the first several years of service-based eligibility;
- the incentive to work until a member can retire with a pension maximum, instead of when first eligible to retire, was affected when retirees became eligible to retire, receive a pension and receive a salary; and
- PERA's actuary is in the process of determining whether or not there was a cost to the retirement system for retirees returning to work and receiving a pension check as well as a salary. The actuary estimates that he will complete the cost study in early December, at which time PERA will notify the legislature and employers of the findings.

Representative Bratton asked about the nature of the Legacy System data problems. Mr. Slattery stated that the data problems relate to credited service. PERA is mailing statements to members asking them to verify the data. If there is a discrepancy, PERA contacts the employer to confirm the information supplied by the member.

Representative Larranaga asked about the number of active members that have data problems. Mr. Slattery stated that approximately 50,000 member records need to be audited to be certain.

Representative Heaton asked who has the burden of proof in resolving data discrepancies. Mr. Slattery said that the burden is with the employer.

Senator Carraro expressed concern about the total liability of the state related to the generous PERA Plan 3 benefits. Mr. Slattery stated that PERA is prefunded, actuarially sound and in no danger of defaulting on pension payments.

Representative Larranaga is opposed to return to work when it is detrimental to other employees' career advancements.

Mr. Foy stated that the legislation passed in 2005 increases the employer contribution 75 basis points per year for seven years and 7.5 basis points for the employee for four years. The current ERB-funded ratio is 70.2 percent. It is estimated that five years from now, the unfunded liability will be 80 percent and the time needed to reach 100 percent funded will decrease from infinity to 30 years, consistent with GASB requirements.

Senator Griego asked about the actuarial impact of all the groups that are coming to the committee seeking enhanced retirement benefits. Mr. Slattery noted that it is basically a policy decision. In the case of the state police, the conversion would reduce the liability of the state general plan and increase the liability of the state police plan.

Representative Heaton suggested that the PERA return-to-work provisions should be the same as the ERB provisions, i.e., a one-year layout rather than only 90 days.

Representative Heaton requested a side-by-side comparison of ERB and PERA retirement features.

—Paul Swanson, ERB

The current status of the pension plan was summarized as follows:

- 68,135 active members
 - Increased 1.6 percent per year since 1994
 - Average pay, \$34,865
 - Average age, 45.6
- 28,050 retirees
 - Increased 4.7 per year since 1994 - average benefit, \$17,594
- 2.5 active members per retiree
 - 1994 - 3.4 active members per retiree
- Educational Retirement in NM 2006
 - 2004 Retirements 1,512
 - 2005 Retirements 1,726
 - 2006 Retirements 1,924
 - June 2006 Retiree Payroll \$41.1 million
 - August 2006 Retiree Payroll \$44.1 million
 - Number of Refunds FY05 8,740
 - Total Amount Refunded \$28.1 million

The eligibility rules for retirement and the annuity options are as follows:

- five years and age 65
- Rule of 75: age plus earned years equal 75
- 25 years of earned plus allowed (up to five allowed + five military) service credit
- If you are under age 60
 - age 59 to 55 - reduce benefits 2.4 percent each year under 60, e.g., age 55 = 12 percent reduction
 - age 54 to 51 - reduce benefits 7.2 percent each year, e.g., age 51 = 40.8 percent reduction
- Option A (Normal Option)
 - largest amount
 - ends at retiree's death
 - beneficiaries only get balance (if any) of members contributions as lump sums
- Option B
 - benefit is reduced; beneficiary gets the same benefit if the member dies
 - member "pops up" to normal option if beneficiary dies first
 - reduction is based on member and beneficiary's age: higher if member is older and beneficiary younger; under B, the beneficiary is a spouse of any age, or another person no more than 10 years younger than the retiree
- Option C
 - benefit is reduced
 - beneficiary receives one-half of the member's benefit if the member dies

- o reduction based on the member's and beneficiary's age (nonspouse can be more than 10 years younger)
- o reduction is less than Option B
- o if beneficiary dies, member "pops up" to normal option

The cost of living allowance (COLA) for retirees is subject to the following rules:

- starts on July 1 of the year a member reaches age 65
- one-half of the Consumer Price Index (CPI)
- o maximum of four percent
- o minimum of two percent or actual CPI if less than two percent
- o COLA for 7/1/06 was two percent

A retiree may return to work according to the following rules (no effect on ERB funding status). The retiree:

- can return to work for ERB employer after 12-month layout (no substituting, contracting, volunteering in a typically paid position);
- can continue receiving ERB pension;
- does not earn credit toward increased pension; and
- does not pay into ERB (7.75 percent); employer does pay their 10.4 percent.

There are two types of retirement plans: defined benefit and defined contribution. Defined benefit plans guarantee a lifetime income for the retiree; however, they can be expensive to the employer. Defined contribution plans are becoming increasingly popular because the employer has no lifetime liability.

Representative Larranaga asked about salary augmentation with respect to medical doctors. Mr. Swanson stated that salary augmentation in the final years of service is always a possibility. He does not believe it is a widespread practice.

Seventy percent of ERB retirees elect the normal (Option A) retirement benefit, i.e., the monthly benefits terminate when the retiree dies.

Approximately 1,700 of the 28,000 retirees have taken advantage of the return-to-work program. It has been determined that the return-to-work program does not adversely affect the actuarial status of the retirement fund.

Proposed Study; PERA; House Memorial 34, 2006 Session

—Sheila Pugach

Staff distributed a letter from Ms. Pugach explaining the change that is requested to PERA's retirement calculation. The content of the letter is as follows:

"Oct. 17, 2006

Dear Committee Members,

I respectfully request that you consider changing the retirement calculation from 3 consecutive highest years of salary to 3 highest years of salary.

Although for most people the last three consecutive years of earnings are the years of highest salary, I am in an unusual situation. I worked for over 9 years for the State of New Mexico in Santa Fe. I then returned to Albuquerque and worked for Bernalillo County for 2 years at a very much reduced salary (about \$11,000 less). I then was fortunate to get a position with the City of Albuquerque where I am currently employed and where my salary increased. If I were to retire within the year, the interim years at the County, which were at a far lower salary than either my State or my City salary, would be counted in my pension (as well as the time I have worked for the City of Albuquerque. This is because of the requirement that the years be consecutive. The higher salary at the State would not be considered in my pension calculation. If I were to retire now, my pension would not benefit from the higher contributions I made while working for the State of New Mexico.

This situation, affects only a small number of people for two reasons. Most people do not have an interim decrease in salary. Also, most people start working under PERA when they are younger and have the years to work and earn three consecutive years at a higher salary. However, State, County and City governments in New Mexico have been very good in hiring middle age people. I have been under PERA for approximately 14 years. The change in the calculation would make a difference in my otherwise low pension.

My situation is quite unusual because of the combinations of both the above reasons. I do not think that the original intent of the legislature was to penalize the few people who might be in this situation.

I request this change in the PERA pension calculation for the following reasons:

- 1) The number of people in this situation would be very small. I personally know of no one else in this situation. The fiscal impact of this should be minimal.
- 2) I think the mechanics of calculating the pension in these cases could be made simple. The salary history could be 'exported' from the current computer system (database) to an Excel spreadsheet where with one click at the top of the salary column, the salary could be sorted in highest order first. This is one possible scenario.
- 3) Just as there are many special cases such as purchasing time for Military or people who have worked out of State, airtime etc. one could make this calculation only for those people who request it in writing. In other words it could be done on what one would call an 'exception' basis. There are many exceptions now as I have read in the La Voz.
- 4) I do not consider this request an enhancement of the PERA pension, but an adjustment to what I think were unintended consequences of the requirement of three consecutive years. It is also a matter of fairness.

Thank you for your consideration."

Mr. Slattery indicated that PERA is opposed to the change.

The committee voted not to support the requested change.

Adoption of September 6, 2006 Minutes

The committee unanimously adopted the September 6, 2006 minutes.

Deferred Compensation Overview

- Kurt Weber, PERA Deputy Director
- Joanne Garcia, PERA
- Jim Keeler, Nationwide Investment Services

The status of the deferred compensation plan as of June 30, 2006 is as follows:

- plan assets - \$274 million (\$26 million increase from 6/30/05);
- quarterly contributions - \$6.4 million;
- quarterly distributions - \$2.4 million;
- plan participants - 12,939;
- participating employers - 93 (includes state, county, city, schools, universities and special districts);
- 13 new employers affiliated since 6/30/06; and
- new contacts have been made with various state universities this past year.

Nationwide has a local office in Santa Fe with four representatives that cover the state. In the past year, they have accomplished:

- new enrollments - 1,159;
- increased contributions - 19,967;
- deferrals increased by 10 percent in an 18-month period (12/31/05 through 6/30/06);
- reinstatements - 78;
- group meetings - 933; and
- asset allocations increased by 35 percent in the same 18-month period.

The investment options available to a participant are:

- 16 mutual fund core investment options (includes stable value option);
- five lifecycle portfolios - implemented 2/25/05:
 - 963 participants currently invested in the portfolios; and
 - 688 in the last year;
- tied to anticipated retirement date;
- custom designed utilizing several funds from the core investment options. Provide diversification;
- constructed and reviewed quarterly by the PERA board and plan investment consultant. Poor performing funds are replaced as necessary;
- no additional fees other than standard fees charged by individual component mutual funds;
- self-directed brokerage account option - implemented 2/14/05:
 - initially mutual funds only; and
 - recently added exchange-traded funds (ETFs) offered by Vanguard and BGI;
- changed from Harris *direct* to Schwab:
 - increase in the number of participants; and
- loan program - implemented 10/22/04:
 - charge interest at prime rate plus one percent; and
 - up to five years to repay general purpose loan and 15 years for purchase of primary residence.

Representative Varela asked about the advice that Nationwide provides to participants. Mr. Weber stated that Nationwide does not give participants advice; however, the lifecycle plans offer diversification and rebalancing for participants.

Representative Varela asked Mr. Foy if ERB offers a deferred compensation plan. Mr. Foy said that it is the responsibility of each school district to contract for a deferred compensation plan for its employees.

Representative Varela asked about accounting problems. Mr. Weber stated that there is a significant time delay in posting employees' contributions to their individual accounts. As of today the accounting system is current through June 30, 2006. Representative Varela suggested that resources need to be directed toward making the accounting system more timely.

Representative Larranaga asked if participating agencies advertise the benefits of deferred compensation plans. Mr. Keeler stated that newsletters and pay envelope enclosures are used to promote participation.

Representative Bratton asked about contribution limits. Mr. Keeler said that for persons under age 50, the maximum annual contribution is \$15,000; for persons over 50, the maximum is \$20,000.

University Campus Police; Change in Retirement Plan

—Deputy Chief Steven Lopez

The public higher education institutions in New Mexico are seeking approval of legislation to authorize the move of certified police officers from the educational retirement system to the public employee retirement system. This move is being sought in order to attain parity with the other law enforcement agencies in New Mexico and thereby improve recruitment and retention of high-quality officers to protect the students and staff at the four-year institutions. The plan has been developed with the assistance of both the ERB and the PERA directors and legal staff. It should have no impact on the solvency of either plan and does not require the transfer of any funding between the plans. A total of 78 current employees would be affected.

The ability to recruit and retain police officers in New Mexico has reached a critical level, and university police departments have been hard hit. One of the primary challenges identified regarding the ability to recruit and retain officers is disparity between the ERB (where university officers are currently placed) and the PERA (where all other police officers in the state are placed). The differences are so great that an officer who works for a university for five years will be able to leave to work for a municipality and still retire sooner and at a higher rate of retirement than if the officer continued to work for the university. This has led to a number of experienced officers leaving after universities have paid for their initial academy and training. The end result is that the experience level at the universities has shrunk, while the expense of training has increased. Furthermore, attempts at recruiting new officers have been met with decreasing numbers of qualified applicants, as other agencies recruiting from the same

pool are able to offer better benefits. In order to halt the exodus of experienced officers and level the recruitment playing field, discussions have been held with the ERB and PERA directors about options.

Based on the analysis and suggestions provided by the two retirement system directors and their staff, the best course of action is to move university police officers from ERB to PERA. Both systems support this move, with the condition that it be prospective (money will not be pulled from ERB and PERA will not incur liability for years contributed under ERB). This means that current officers will end up getting a "mixed" retirement upon eligibility, with their years contributed under ERB being calculated at the ERB rate, and years under PERA at the PERA rate. The plan identified by PERA as the most appropriate for placement is the State Police and Adult Correctional Officers Plan. Both systems agree that legislative changes will need to be made to the Educational Retirement Act to allow the movement of the affected employees.

Per the recommendations of the retirement systems, employees who are currently in ERB would leave their contributions in that system and would start contributing to PERA on the transition date. When their years of service equal 25 years combined between the two systems, they would be eligible to retire. Upon retirement, the employee would be paid from the ERB system for their time paid into ERB and at the ERB rate. Time paid into PERA would be paid by PERA at the PERA rate. The retiree would receive a single retirement check that has been combined by the two systems. Both systems indicate this is currently what happens with a number of other employees in the state when someone moves from one system to the other and then retires under a combination of the two. As a result, there is already a mechanism in place for handling this type of combined retirement. Any legislative changes made to the two systems in the future in order to ensure solvency would apply to the employees based on their portions of funds paid into the respective systems, helping to ensure that there is no adverse impact on either system.

Mr. Slattery noted that the proposed migration would not be a detriment to PERA because the police would be paying their own way.

Robert Schulman of ERB stated that the proposed migration could lead to a mass exodus in favor of PERA. After consulting with its actuary, ERB no longer supports the move.

Committee Discussion of Topics for the November Agenda

—Doug Williams, LCS

- | | |
|------------|--|
| 9:30 a.m. | Composition of the Boards of ERB, PERA and SIC
—Committee discussion with board chairs and/or members |
| 11:00 a.m. | ERB Actuarial Update |
| 1:00 p.m. | SIC Student Managed Investment Program
—UNM and NMSU \$10 million initiative (total) |
| 1:30 p.m. | SIC Economic Investments |

—Film investments, etc.
2:00 p.m. Juvenile Correctional Officers; Retirement Benefit Enhancement
2:30 p.m. Adult Correctional Officers; Retirement Benefit Enhancement
3:00 p.m. 911 Communications Workers; 20-Year Retirement
3:30 p.m. Committee Discussion of Draft Legislation, if any, (to be prepared by
LCS for consideration at the December 20, 2006 meeting)

Other Business

There was no other business brought before the committee.

The committee adjourned at 3:00 p.m.

Revised: October 31, 2006

**TENTATIVE AGENDA
for the
THIRD MEETING
of the
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE**

**November 6, 2006
Room 322, State Capitol
Santa Fe**

Monday, November 6

9:00 a.m. **Call to Order**

9:05 a.m. **Composition of the Boards of the Educational Retirement Board (ERB), the Public Employees Retirement Association (PERA) and the State Investment Council (SIC)**

—Bruce Malott, Chair, ERB
—David Baca, Chair, PERA Board
—Bob Jacksha, SIC

11:30 a.m. **ERB Actuarial Update**
—Evalynne Hunnemuller, Executive Director, ERB

12:00 noon **Lunch**

1:00 p.m. **SIC Student Managed Investment Program**
—Bob Jacksha, SIC

1:30 p.m. **SIC Economic Investments — Film Investments**
—Bob Jacksha, SIC

2:00 p.m. **Committee Discussion of Potential Committee-Sponsored Legislation**
—Comparability of Retirement Plan Features
 —Terry Slattery, Executive Director, PERA
 —Evalynne Hunnemuller, Executive Director, ERB
—Return to Work Issues
 —Cleo Griffith, Legislative Council Service
—Other Issues

3:00 p.m. **Juvenile Correctional and Probation Officers — Retirement Benefit Enhancement**
—Danny Sandoval, Children Youth, and Families Department

3:20 p.m. **Probation and Parole Officers — Retirement Benefit Enhancement**
—Tony Marquez, Jr., Administrative Services Division, Corrections Department

3:40 p.m. **911 Communications Workers — Retirement Benefit Enhancement**
—Bud Lake, 911 Communications Director, Bernalillo County Communications
Department

4:00 p.m. **Adjourn**

**MINUTES
of the
THIRD MEETING
of the
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE**

**November 6, 2006
State Capitol
Santa Fe**

The third meeting of the Investments and Pensions Oversight Committee for the 2006 interim was called to order by Representative John A. Heaton, chair, on Monday, November 6, 2006, at 9:00 a.m. at the State Capitol in Santa Fe.

Present

Rep. John A. Heaton, Chair
Sen. John Arthur Smith, Vice Chair
Rep. Donald E. Bratton
Sen. Joseph J. Carraro
Sen. Phil A. Griego
Sen. Carroll H. Leavell
Rep. Luciano "Lucky" Varela

Advisory Members

Sen. Carlos R. Cisneros
Council Frank Foy, Educational Retirement Board (ERB)
Treasurer
Rep. Kathy A. McCoy
Olivia Padilla-Jackson, State Board of Finance
Rep. Joe M Stell

Employees

(PERA)

Absent

Rep. Miguel P. Garcia
Rep. Larry A. Larranaga
Rep. Henry Kiki Saavedra

Gary Bland, State Investment
Douglas Brown, State

Sen. Pete Campos
Sen. Joseph A. Fidel
Rep. Justine Fox-Young
Robert Gish, Public

Retirement Association
Sen. Stuart Ingle
Rep. Patricia A. Lundstrom
Sen. Leonard Lee Rawson
Sen. H. Diane Snyder

Staff

Michelle Aubel, Legislative Finance Committee (LFC)
Doris Faust, Legislative Council Service (LCS)
Norton Francis, LFC
Cleo Griffith, LCS
Larry Matlock, LCS
Doug Williams, LCS

Guests

The guest list is in the meeting file.

Monday, November 6

Composition of the Boards of the ERB, PERA and State Investment Council

- Bruce Malott, Chair, ERB
- David Baca, Chair, PERA Board
- Bob Jacksha, State Investment Council (SIC)

Mr. Malott reviewed the membership of the ERB. The members are:

- Bruce Malott, Chair, Governor's Appointee
- Mary Lou Cameron, Vice Chair, National Education Association
- Gary Bland, Secretary, Governor's Appointee
- Dr. Pauline H. Turner, American Association of University Professors
- Delman Shirley, New Mexico Association of Education Retirees
- Dr. Veronica Garcia, Secretary, Public Education, Ex Officio
- Douglas Brown, New Mexico State Treasurer, Ex Officio.

Mr. Malott stated that the board recommends adding three members with a background in finance. They would represent the New Mexico School Administrators, the American Federation of Teachers (AFT) and university presidents.

Mr. Baca reviewed the membership of the PERA Board. The members are:

- David A. Baca, Chair, County Member
- Victor A. Montoya, Vice Chair, Retiree Member
- Douglas Brown, New Mexico State Treasurer, Ex Officio
- Rebecca Vigil-Giron, Secretary of State, Ex Officio
- Nancy Hewitt, State Member
- Jeff Riggs, State Member
- Danny Sandoval, State Member
- Jeff Varela, State Member
- Cynthia Borrego, Municipal Member
- Patricia French, Municipal Member
- Lou Hoffman, State Member
- Loretta Naranjo-Lopez, Retiree Member.

Mr. Jacksha reviewed the membership of the SIC Board. The members are:

- Governor Bill Richardson
- State Investment Officer Gary B. Bland
- State Treasurer Douglas Brown
- Commissioner of Public Lands Patrick Lyons
- Secretary of Finance and Administration Katherine Miller
- David Harris, Public Member
- Andrew Davis, Public Member
- Ike Kalangis, Public Member
- Jim Rutt, Public Member.

Senator Smith indicated that his interest in the composition of the ERB is centered on financial expertise among board members. He also said that, in the past, legislation to alter the board membership stalled because of so many special interest groups that wanted to be represented. He asked about the concept of combining the boards of ERB and PERA.

Mr. Malott does not support combining the boards because he believes that diversification of investments is essential to the financial health of both funds. He also indicated that some believe it is important that board members have a vested interest in the performance of retirement fund investments.

Senator Smith asked Mr. Malott about his position on pension obligation bonds (POBs). Mr. Malott said that he explored the strategy; however, he is not an advocate of POBs.

Representative Varela asked why there are so many different investment managers engaged by the three investment agencies.

Representative Heaton asked Mr. Malott what he thinks about having a member of the LFC serving as a member of the ERB. Mr. Malott indicated there would be no objection, provided the person has a background in finance.

Representative Heaton asked Mr. Baca about introducing a requirement that PERA Board members have a financial background. Mr. Baca stated that at present there is no such requirement; however, most do have a background in finance. He is concerned that introducing a new requirement might restrict who is eligible to be a member.

Representative Varela said that he thinks the state auditor should be a member of the boards.

Representative Heaton asked the executive directors if they have any comments.

Evalynne Hunnemuller stated that the proposal to add the state auditor has been advanced in the past. Terry Slattery said that he does not support introducing a requirement that members have a financial background. He prefers to conduct in-house training of board members.

Representative Heaton said that he is concerned that PERA Board members are naive and are educated in matters of finance exclusively by the staff.

Representative Bratton said that a requirement that board members have 10 years of investment experience is excessively restrictive and could make it difficult to find people willing to volunteer time to serve. Also, he said that he believes that the boards should be comprised of people with and without a vested interest in the performance of investments.

Mr. Malott responded that some time ago, the board considered the creation of a volunteer advisory council comprised of people with a financial experience.

Senator Smith expressed appreciation with respect to Mr. Malott's candor and asked that a similar discussion be held with the LFC.

Representative Heaton asked Mr. Malott what he think about adding a member who does not have a vested interest in the fund. Representative Varela suggested that the state auditor be added to the board. Mr. Malott stated that there would a conflict of interest with the state auditor because the auditor is prohibited from auditing an organization if the state auditor is a member of the board of the organization.

Mr. Malott volunteered to discuss with the ERB the subject of adding a public member that does not have a vested interest in the fund.

Senator Leavell asked Senator Smith if he is proposing that a member of the LFC serve on the ERB. Senator Smith said that he supports the addition of university presidents and, perhaps, one additional member, but not the AFT or school administrators.

Representative Heaton summarized the discussion by observing that the committee seems to be recommending the addition of: (a) university presidents; (b) the AFT; (c) the LFC; and (d) a governor appointee who does not have vested interest. All of these appointees would have to possess financial experience. Also, one of the governor's existing appointees would not have a vested interest in the fund. Senator Smith does not support membership on the part of the AFT.

With respect to PERA, Representative Heaton indicated that the committee wants to increase the financial expertise of board members and that, perhaps, two members should not have a vested interest. The latter might be accomplished by converting two of the existing members to outside, nonvested members. Senator Leavell stated that he does not support expanding the PERA Board beyond 12 members. Representative Heaton requested that the PERA Board consider this proposal.

Representative Heaton asked Mr. Jacksha about the SIC Board. Mr. Jacksha indicated that the SIC Board is working well and cautioned against enlarging the number of members because it could jeopardize efficiency.

Representative Varela asked if Mr. Bland is a voting member of the SIC Board. Mr. Jacksha responded that he is a voting member.

Educational Retirement Board Actuarial Update

—Evalynne Hunnemuller

A summary of ERB statistics are as follows:

- Average Pay, Teachers: \$34,865

- Average Pay, New Entrants: \$26,000
- 72 percent of Active Employees Are Female
- Average Entry Age of New Entrants: 37 Years of Age
- Average Retiree Benefit: \$17,594
- Average Retirement Age: 59 Years of Age
- Retirements 2004: 1,620
- Retirements 2006: 1,924
- FY05 Retiree Payroll: \$452,599,000
- June 2006 Retiree Payroll: \$41,844,385
- July 2006 Retiree Payroll: \$44,443,523
- Number of Refunds FY05: 6,284
- Total Amount Refunded: \$28,545,000

Year	Market Value of Assets	Funding Ratio
1996	\$4.2 billion	72.1%
1999	6.7 billion	85.9%
2000	7.5 billion	91.6%
2003	6.0 billion	81.1%
2004	6.8 billion	75.9%
Current Year	8.6 billion	70.0%

The fund's assets have almost doubled, but so have liabilities. The unfunded liability in 1996 was \$1.5 billion. It is now \$3.4 billion.

Employer contributions are scheduled to increase according to the following table:

Year	Rate	Est. Dollar Value
FY 2005	8.65%	—
FY 2006	9.40%	\$ 17.5 m
FY 2007	10.15%	18.6 m
FY 2008	10.90%	19.5 m
FY 2009	11.65%	20.3 m
FY 2010	12.40%	21.2 m
FY 2011	13.15%	22.1 m
FY 2012	13.90%	23.0 m

Employee contributions are scheduled to increase according to the following table:

	Rate	Est. Dollar Value
FY 2005	7.600%	—
FY 2006	7.675%	\$1.8 m
FY 2007	7.750%	1.8 m
FY 2008	7.825%	1.9 m
FY 2009	7.900%	2.0 m

The history of investment returns is as follows (objective is eight percent):

FY 1995	18.5%	FY 2001	-11.1%
FY 1996	12.2%	FY 2002	- 8.8%
FY 1997	20.3%	FY 2003	2.7%
FY 1998	19.6%	FY 2004	15.4%
FY 1999	11.3%	FY 2005	9.86%
FY 2000	13.1%	FY 2006	12.3%

Current calendar year: 12.27%.

The current, estimated actuarial position is as follows.

- The funding period will drop to 31 years by 2009.
- The GASB requirement for retirement funds is 30 years.
- The fund is projected to be 75.8 percent funded in 2010, and 81.2 percent funded in 2015. It is currently at a 70 percent funded level.
- The unfunded liability slowly drops from \$3.415 billion this year to \$3.385 billion in 2010 due to good investment returns over the past three years. However, it will then rise for a few years until the final increased employer contribution level of 13.90 percent in 2011 is realized and begins to show results. The health of the fund is determined by contribution levels and investment returns.

Representative Varela asked if ERB has had any computer problems and if the payroll obligations are being met on a timely basis. Jeffrey Riggs, deputy director, ERB, stated that ERB has had no significant problems with the new computer system. Ms. Hunnemuller stated that ERB's payroll is current.

Senator Smith asked about the return-to-work program. Ms. Hunnemuller stated that there were 900 participants at the end of 2005. She believes that current participation may be as high as 1,500; however, she does not have an exact number at present.

Senator Smith indicated that he thinks the return-to-work program should be

allowed to sunset.

Representative McCoy asked why there is a disparity in the funded ratio between ERB and PERA. Ms. Hunnemuller stated that the difference relates to contribution levels and investment performance in 2000.

Senator Smith asked if ERB is aware of any proposed changes in retirement benefits. Ms. Hunnemuller responded that she is not aware of any requests for changes in benefits. She also indicated that ERB will support a new memorial recommending no change in retirement benefits.

Representative Heaton asked if any changes in statute are needed. Mr. Foy, Mr. Jacksha and Dominic Garcia, PERA, all indicated that no change in statutes are needed and that they are all still in the process of implementing changes in asset allocation that was authorized by the Prudent Investor Act.

SIC Student Managed Investment Program

—Bob Jacksha, SIC

Mr. Jacksha indicated that a contract is still being developed to implement the program.

Representative Stell asked where the \$10 million would come from. Mr. Jacksha stated that the funding would come primarily from the land grant and severance tax permanent funds.

Representative Varela asked where the idea came from for this program. Mr. Jacksha stated that Mr. Bland was the primary sponsor of the plan. The proposal was discussed with the universities and the Office of the Governor. It was presented to the SIC Board, and the board approved by mutual assent.

Representative Varela requested a copy of the contract when it is finalized. He said that he is concerned that such a program may be advanced without involvement of the legislature.

Representative Varela suggested that universities should use their own funds for this program. Mr. Jacksha said he is not aware of the universities using their own endowment funds for a student program.

Senator Smith stated that he agrees conceptually with the program, provided there are adequate safeguards.

SIC Economic Investments; Film Investments

—Bob Jacksha, SIC

The economic impact of SIC film investments is summarized in the following table:

Project Name	Loan Amount	Total NM Below the Line Payroll	Total New Mexico Crew	Total Spent in New Mexico
Suspect Zero	\$7,500,000	\$1,500,000	121	\$5,400,000
Blind Horizon	4,780,000	787,000	107	3,100,000
Elvis Has Left the Building	7,500,000	1,268,000	132	4,600,000
Cruel World	1,700,000	334,000	48	700,000
Wildfire	4,094,897	1,039,000	117	4,000,000
First Snow	7,350,080	968,000	85	6,500,000
Bordertown	15,000,000	2,455,000	137	7,200,000
Wildfire - The Series - Season 1	15,000,000	4,063,000	212	11,000,000
The Flock	2,300,000	4,201,022	235	20,966,435
Funny Farm	11,675,000	1,239,872	71	2,143,618
Seraphim Falls	15,000,000	2,987,866	263	7,250,000
Wildfire - The Series - Season 2	15,000,000	5,791,970	163	13,500,000
Wanted: Undead or Alive	3,800,801	621,423	93	1,500,000
Living Hell (The Horror Chronicles)	3,859,823	700,421	93	1,500,000
Buried Alive (The Horror Chronicles)	3,403,876	647,528	81	1,500,000
Employee of the Month	13,002,694	1,394,961	124	7,000,000
Wildfire - The Series – Season 3	15,000,000	6,000,000	174	15,000,000
Totals	\$145,967,171	\$35,999,063	2,256	\$112,860,053

Outstanding film loans are summarized in the following table:

Project Name	Date Approved	Maturity Date	Loan Amount	Total Film Budget
Bordertown	6/28/05	3/31/06	\$2,350,000	NA
Suspect Zero	7/23/02	12/12/06	7,500,000	\$27,000,000
Elvis Has Left the Building	08/26/03	10/31/07	7,500,000	8,000,000
Seraphim Falls	10/25/05	01/31/08	15,000,000	18,024,702
Bordertown	6/28/05	11/14/08	12,650,000	21,053,000
Wanted: Undead or Alive	1/25/06	12/22/08	3,798,410	3,798,410
Living Hell (The Horror Chronicles)	1/26/06	12/30/08	3,858,646	3,858,646
Buried Alive (The Horror Chronicles)	6/27/06	1/6/09	3,450,001	3,450,001
Employee of the Month	2/28/06	3/30/09	13,002,694	13,002,694
Funny Farm	10/25/05	4/17/09	12,420,000	12,420,000
Wildfire - The Series–Season 1	6/28/05	10/14/10	15,000,000	16,687,000
Wildfire - The Series–Season 2	11/22/05	3/28/11	15,000,000	21,775,000
Wildfire - The Series–Season 3	6/27/06	5 Years	15,000,000	22,514,009

Total Outstanding

\$126,529,751

\$171,583,462

Project Name	Date Approved	Maturity Date	Loan Amount	Total Film Budget
Blind Horizon	11/26/02	02/07/05	\$4,780,000	\$5,500,000
Wildfire	10/26/04	04/07/08	4,094,897	4,094,897
Cruel World	04/27/04	07/16/06	1,700,000	1,700,000
First Snow	01/25/05	08/14/06	7,300,000	7,300,000
The Flock	9/19/05	11/10/06	2,300,000	2,300,000
Total Matured			\$20,174,897	\$18,594,897

Regarding the New Mexico private equity investment program (NMPEIP), Mr. Jacksha noted that as of March 31, 2006, the NMPEIP held partnership interests in 23 private equity funds and one direct investment, to which the program has committed a total of \$252.0 million. With the state's target of \$366.7 million capital committed, the program appears to have adequate funds available for making additional commitments of \$30 million to \$50 million over the next year. The program's \$140.7 million capital drawn represents 61.48 percent of the statutory target of \$229.2 million. The portfolio carrying value of the program is approximately \$149.5 million, a 1.06 multiple of the \$140.7 million invested.

The economic impact of the NMPEIP is summarized as follows:

NMPEIP Capital Invested	\$110,229,000
Outside Investment	\$595,828,000
Number of Companies Financed	33
Total Jobs Created	685
Total Annualized Purchases	\$24,297,000
Total Annualized Payroll	\$56,352,000
Total Annualized Impact on the NM Economy	\$80,649,000
Average Salary for Jobs Created	\$82,265
Average Salary in New Mexico	\$29,597

Representative Bratton suggested that the committee continue to exercise oversight because of the large amount of money in film industry loans.

Senator Griego stated that there are many funding needs and asked why the state has \$14 billion being held in SIC-managed permanent funds. Mr. Jacksha explained that there is an annual distribution to the general fund from the land grant and severance tax permanent funds.

Committee Discussion of Potential Committee-Sponsored Legislation

—Comparability of Retirement Plan Features

—Terry Slattery, Executive Director, PERA

—Evalynne Hunnemuller, Executive Director, ERB

Mr. Slattery and Ms. Hunnemuller presented a comparison of retirement plan features as follows.

ERB

Pension Factor 2.35%

Contributions

Employee and employer contributions
increasing 2 and 5 more years

	Employee	Employer
FY 2005	7.6%	8.65%
FY 2006	7.675%	9.4%
FY 2007	7.75%	10.15%
FY 2008	7.825%	10.9%
FY 2009	7.9%	11.65%
FY 2010	7.9%	12.4%
FY 2011	7.9%	13.15%
FY 2012	7.9%	13.9%

Membership Eligibility

All public school and university employees working more than .25 of full-time-equivalent are eligible for membership in ERB.

Certain two- and four-year community college and university employees may choose, within the first 90 days of employment, a defined contribution option.

Educationally certified employees in certain state agencies with an educational component may choose either the ERB or PERA plan unless they possess a current teaching certificate.

Retirees from PERA may not participate in the ERB retirement plan.

Retirement Qualifications

25 years of service

Age + service = 75

Age 65 + 5 years of service

PERA - State Plan 3

Pension Factor 3.0%

Contributions

7.42% Employee
16.59% Employer

Note: PERA has 29 other plans with employee contributions ranging from 7% to 16.65% and employer contributions ranging from 7% to 25.72%.

Membership Eligibility

All state employees must be members of PERA excluding the following:

- Seasonal and temporary employees
- Part-time employees who work less than 20 hours in a 40 hour pay period
- Student employees
- Retired members from ERB, the judicial retirement system or the magistrate retirement system
- Retired legislative workers

Retirement Qualifications

25 years of service at any age, or

Age 60 + 20 or more years of service

Age 61 + 17 or more years of service

Age 62 + 14 or more years of service

Age 63 + 11 or more years of service

Age 64 + 8 or more years of service

Age 65 + 5 years of service

Benefit Calculation

Final average salary of highest 5 consecutive years of service
 X
 Years of service
 X
 .0235

No maximum benefit. 80% benefit is reached after 34 years of service.

Disability Retirement

Members with at least 10 years of earned service may apply for a disability retirement. The retirement is approximately 33% of the final average salary and a COLA (see below) begins in the third year of disability retirement.

Cost-of-Living Adjustment (COLA)

Annual, starting at age 65
 1/2 of CPI with minimum of 2% (but 100% of CPI if lower than 2%), maximum of 4%
 Average COLA increases over the last 20 years have been 2%.

Withdrawn Service Credit

Upon termination of employment a member may withdraw contribution plus interest (the interest is determined annually by the board). The cost to purchase the withdrawn service is 8% from date of withdrawal to date of purchase.

Benefit Calculation

Final average salary of highest 3 consecutive years of service
 X
 Years of service
 X
 .03

Benefit maximizes at 80% with 26 yrs. and 8 months of service.

Disability Retirement

Duty disability - members are eligible for duty disability from the first day of employment.

Nonduty disability - members are eligible for nonduty disability after being vested with 5 years of service credit.

Cost-of-Living Adjustment (COLA)

3% each year after members have been retired
 2 full calendar years (January 1 through December 31) effective July 1 of the following year. Disability retirees and retirees who are at least age 65 prior to their first COLA eligibility date have a reduced waiting period of 1 full calendar year.

Forfeited Service Credit

Service credit for which a member withdrew, or forfeited, employee contributions plus interest when working for a PERA affiliate in the past can be purchased by paying the total of the amount withdrawn plus interest from the date the contributions were withdrawn to the date of purchase.

Interest rates:

5.25% Forfeited service prior to 12/31/83

10% Forfeited service from 1/1/84-12/31/01

8% Forfeited service from 1/1/02 to present

Allowed Time

Can buy up to 5 years of service from private educational service or public educational service in another state.

Cost is actuarial. For example, a 50-year old with 20 years of earned service making \$40,000 would pay \$26,459 for one year of allowed service.

Military Service Credit

Must be purchased within the first 3 years of employment. Cost is 10.5% of average ERB salary for each year of active military service to be purchased up to 5 years. Active employees who are called up to military service are granted credit for that service if they return to employment with an ERB employer within 18 months.

Miscellaneous Service Credit

ERB does not allow the purchase of any service credit other than the allowed time, military service and withdrawn service discussed.

Retirees Returning to Work

- 12 months layout period prior to applying for the return-to-work program. Retirees must not work, contract, or volunteer in a typically paid position for an ERB employer in that time.
- Employers make employer contributions.
- Employees do not make ERB contributions.
- Members who retired before 1-1-01 may return without a layout.
- Members who retired before 1-1-01 but suspended their pension must layout for 90 days.
- Retirees may earn the greater of \$15,000 or .25 of full-time-equivalent with an ERB employer and maintain their pension.
- Retirees may work as independent contractors but

Air Time

Members must be vested with 5 years of earned service credit to be eligible to purchase up to 12 months of "air time" permissive service credit.

The employee pays full actuarial value. For example, a 50-year old with 20 years of earned service making \$40,000 would pay an estimated \$18,220 for one year of air time.

Military Service Credit

Members can purchase up to 5 years of nonintervening military service credit at any time after vesting. Cost is a total of the employee and employer contribution rate (24.01% for State General Plan 3) multiplied by the average of the highest 36 consecutive months of reported salary to purchase each month of military service credit.

Miscellaneous Service Credit

PERA also provides for purchasing the following service credit:

- Service with a new affiliated employer
- Employment with a utility company, library, museum, transit company or by a nonprofit organization later taken over by an affiliated public employer
- Civilian prisoner of war
- Cooperative work study (with certain entities)

Retirees Returning to Work

- 90-day waiting period before retirees can return to work for a PERA affiliate.
- Employers make employer contributions on behalf of the retiree from the first day of employment.
- Reemployed retirees pay nonrefundable employee contributions once earnings exceed \$25,000 in a calendar year.
- Reemployed retiree contributions end on Dec. 31, 2006.
- As of Jan. 1, 2007, the employer will pay the full actuarial value of reemploying retirees.
- PERA's actuary is in the process of determining if there is a cost to the fund and

must follow IRS code.

if, or what, an employer will have to pay in contributions to hire retirees.

- ERB's actuaries determined that the return-to-work program has no effect on the solvency of the fund at present.

Note: there is no 90-day waiting period, provision or salary limit for retirees returning to work as independent contractors. PERA makes a determination whether or not a retiree is an independent contractor.

Representative Bratton noted that PERA members work approximately 260 days per year while ERB members work 180 days per year. He would like to see a comparison of benefits that is normalized by the length of the work year.

—Return-to-Work Issues
—Cleo Griffith, LCS
—Other Issues

Senator Smith suggested that he is resigned to allowing the return-to-work provisions sunset in 2012. He requested that staff contact the National Conference of State Legislatures to identify return-to-work provisions in other states.

Representative Heaton indicated that the committee would like to do something about return to work, but is not sure what that is.

Representative Bratton suggested that annual recertification of "critical employment" be implemented.

Senator Leavell would like a comparison of New Mexico PERA and ERB benefits to retirement benefits in other states. Representative Heaton responded that PERA benefits are number one in the country and that ERB benefits are in the top five in the country.

Representative Heaton agreed with Representative Bratton that some type of certification process should be created.

Representative Heaton also noted that the committee would like to review legislation creating a statutory committee.

Juvenile Correctional and Probation Officers; Retirement Benefit Enhancement

—Danny Sandoval, Children, Youth and Families Department

Representative Varela supports the conversion to a 25-year enhanced retirement plan. He noted that a salary increase approved by the legislature was vetoed by the governor.

Senator Griego disapproves of closing the Springer juvenile facility that has resulted in juveniles being placed in adult holding facilities. He asked if probation and parole (P&P) officers will have any input into the administration's decision to close facilities. He will not support improved benefits or salary for P&P officers until the administration allows employee input into the decision-making process.

Representative Bratton does not support improved retirement benefits but does support improved wages. He recognizes that certain jobs have a high burnout rate; however, he believes that people need a decent wage in order to live today.

Representative Heaton noted that the PERA retirement plan is the best in the United States. He believes that earnings today are more important.

Representative Bratton noted that the governor would rather spend \$500 million on a train and a

spaceport than on essential state employee salaries. He said that it is discouraging when the legislature approves a salary increase and the governor vetoes it.

Adult Probation and Parole Officers; Retirement Benefit Enhancement

—Tony Marquez, Jr., New Mexico Corrections Department, Administrative Services Division

Mr. Marquez stated that there is a 22 percent turnover rate in P&P officers.

Senator Smith opposes the enhancement, although he supports an improved salary level.

911 Communications Workers; Retirement Benefit Enhancement

—Bud Lake, 911 Communications Director

Mr. Lake noted that every five years, approximately 80 percent of E911 workers turn over.

Senator Carraro does not believe that 20-year retirement, as opposed to 25-year retirement, is a sufficient incentive in such a high-stress occupation. He stated that hiring more employees and lowering the stress for all would be a better approach.

Senator Leavell is not convinced that enhanced retirement benefits will solve the retention problem and would like to see the result of enhanced retirement on retention in other occupations.

Senator Smith is not in favor of creating disparities among counties by making enhanced retirement optional.

Adoption of October 16-17, 2006 Minutes

The committee unanimously adopted the October 16-17, 2006 minutes as amended.

Other Business

There was no other business brought before the committee.

The committee adjourned at 4:30 p.m.

Revised: December 8, 2006

**TENTATIVE AGENDA
for the
FOURTH MEETING
of the
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE**

**December 20, 2006
Room 307, State Capitol
Santa Fe**

Wednesday, December 20

- | | |
|------------|--|
| 10:00 a.m. | Call to Order |
| 10:05 a.m. | Adoption of November 6, 2006 Minutes |
| 10:10 a.m. | Fire Marshal's Office and Fire Academy Staff Retirement Benefits
—John Standefer, State Fire Marshal |
| 10:30 a.m. | Volunteer Firefighters Retirement Benefits
—Gay Chambers, President, New Mexico Volunteer Firefighters |
| 10:50 a.m. | Public Employees Retirement Association (PERA) Actuarial Report; Impact of Return to Work
—Susan Pittard, PERA |
| 11:20 a.m. | Consideration of Draft Legislation
—Cleo Griffith, Legislative Council Service |
| 12:00 noon | Lunch |
| 1:00 p.m. | Continuation of Consideration of Draft Legislation |
| 3:00 p.m. | Public Comment |
| 4:00 p.m. | Adjourn |

**MINUTES
of the
FOURTH MEETING
of the
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE**

**December 20, 2006
State Capitol
Santa Fe**

The fourth meeting of the Investments and Pensions Oversight Committee for the 2006 interim was called to order by Representative John A. Heaton, chair, on Wednesday, December 20, 2006, at 10:00 a.m. at the State Capitol in Santa Fe.

Present

Rep. John A. Heaton, Chair
Sen. John Arthur Smith, Vice Chair
Rep. Donald E. Bratton
Sen. Joseph J. Carraro
Sen. Phil A. Griego
Sen. Carroll H. Leavell
Rep. Luciano "Lucky" Varela

Absent

Rep. Miguel P. Garcia
Rep. Larry A. Larranaga
Rep. Henry Kiki Saavedra

Advisory Members

James Lewis, State Treasurer
Council
Rep. Patricia A. Lundstrom
Sen. Leonard Lee Rawson
Rep. Joe M Stell

Gary Bland, State Investment

Sen. Pete Campos
Sen. Carlos R. Cisneros
Sen. Joseph A. Fidel
Rep. Justine Fox-Young
Frank Foy, Educational Retirement

Board

Robert Gish, Public Employees
Retirement Association
Sen. Stuart Ingle
Rep. Kathy A. McCoy
Olivia Padilla-Jackson, State Board of Finance
Sen. H. Diane Snyder

Staff

Michelle Aubel, Legislative Finance Committee (LFC)
Cleo Griffith, Legislative Council Service (LCS)
Doug Williams, LCS

Guests

The guest list is in the meeting file.

Wednesday, December 20

The minutes of the November 6, 2006 meeting were unanimously adopted.

Fire Marshal's Office and Fire Academy Staff Retirement Benefits

-Vernon Muller, Deputy State Fire Marshal

The Fire Marshal's Office is seeking 20-year retirement for its members.

Senator Smith asked how many Fire Marshal Office employees are "return-to-work employees". Mr. Muller responded that two employees are return-to-work employees.

Senator Smith indicated that he is opposed to enhanced benefits because of the difficulties that have been experienced with the Educational Retirement Board (ERB).

Senator Leavell said that he is not convinced that enhanced retirement benefits are an effective recruiting tool.

Representative Bratton is concerned about establishing a precedent with respect to enhanced retirement.

Representative Varela asked if municipal firefighters have a 20-year retirement plan. Mr. Muller responded that Municipal Retirement Plan Number Five is a 20-year plan.

Volunteer Firefighters' Retirement Benefits

-Gay Chambers, President, New Mexico Volunteer Firefighters

The Volunteer Firefighter Retirement Plan was implemented by statute in 1978. The amount of compensation was set at that time and has not been changed since that time.

The volunteer firefighters feel it is time to address this issue and update the compensation to better reflect not only the times but the respect that is due the volunteer firefighter. It is also time to get all of the records of the volunteers up to date. The Public Employees Retirement Association (PERA) has 16,000 volunteer firefighters on its rolls. The entire state only has 8,000 firefighters, including paid firefighters. Volunteer firefighters will be happy to help PERA in any way to correct this problem, but they must ask that PERA be willing to help and work with them. Volunteer firefighters are losing volunteers at a rapid rate, and with 87 percent of New Mexico's fire protection being provided by volunteers, the day is rapidly approaching where counties will have to start paying for firefighters. If this retirement is handled properly, it could be a major incentive for retention.

The New Mexico State Firefighters Association was present to address one part of this problem, the retirement issue. In a recent survey sent out to the state's fire service,

the one issue that was uppermost in volunteer's minds was the retirement plan and making it something worthwhile. Recruiting and retention are major issues facing the service, and even the Governor's Commission on the Fire Service in New Mexico was charged with addressing this problem. The only benefit New Mexico has to offer the volunteer firefighter at this time is a reasonable retirement stipend. Perhaps, in the future, there will be some other compensation but currently this retirement is it. The firefighters recognize that this retirement was never intended to support individuals in their retired years but a reasonable supplement is not too much to ask for people who "put it on the line" for no other reason but to give back to their community.

Representative Heaton asked Mary Frederick of the PERA to comment on the fiscal impact.

Ms. Frederick indicated that PERA does not have accurate information regarding the true number of volunteer firefighters. PERA records show a potential of 16,000 volunteer firefighters and PERA is trying to purify the database.

Representative Heaton requested PERA to report to the committee before the 2007 session regarding the financial status of the Volunteer Firefighters Retirement Fund. Ms. Frederick indicated that PERA could do a special mailing to fire chiefs requesting a current list of firefighters. Representative Heaton suggested that such a letter should notify the fire chiefs that the legislature is considering an increase in retirement benefits but will be unable to act if the information is not received.

Senator Leavell indicated that unless PERA conducts an audit of active volunteer firefighters, he is unable to support the proposal.

Senator Smith said that without an accurate database there could be legal issues with respect to retirement claims.

Senator Griego suggested that the volunteer association should be working with the fire chiefs to purify the database.

Senator Rawson suggested that a minimal contribution to the retirement fund by volunteer firefighters would serve to identify the firefighter as an active member.

Representative Bratton indicated that some rules must be established to identify the correct number of firefighters. The legislature needs to know the actual cost before moving forward with an increase in retirement benefits.

Representative Heaton summarized that the legislature needs accurate information regarding the number of firefighters and the actuarial status of the fund. He also agreed with Senator Rawson regarding monetary participation on the part of the volunteer firefighter. Representative Heaton recommended that the volunteer association return to the committee at its first meeting during the 2007 interim. Also, he suggested that the legislature appropriate approximately \$3,000 to PERA to perform an actuarial study of the Volunteer Firefighters Retirement Fund.

PERA Actuarial Report; Impact of Return to Work

-Mary Frederick, PERA

The purpose of the cost study is to measure the cost to the retirement system of allowing PERA retirees who return to work while receiving pension benefits and a salary and to establish contribution rates to be charged to employers who rehire PERA retirees effective January 1, 2007. The history of return to work is as follows:

- in 2004, the legislature passed a bill allowing retirees to return to work for a PERA affiliate, collecting both a pension and a salary;
- PERA could not estimate the cost or impact, if any, to the fund without gathering actuarial data;
- PERA's actuary determined the fund needed two years of experience under the back-to-work provisions to calculate the cost and impact on the fund;
- from 2004 to 2006, employers paid employer contribution on the reemployed retirees from the first day of employment. Reemployed retirees did not pay contributions until reaching a salary of \$25,000 in a calendar year. At that time, the reemployed retiree began making nonrefundable contributions to the fund;
- the legislation provided that, as of December 31, 2006, no additional employee contributions would be required from reemployed retirees; and
- as of January 1, 2007, the employer will be required to make contributions to the fund in the amount specified by the PERA Act or a higher amount adjusted for "full actuarial cost" as determined annually by PERA.

The result of the actuaries' findings are summarized as follows:

- sufficient experience has not developed to evaluate return-to-work statistics at the plan level;
- data is most credible when looking at PERA in total;
- length of reemployment is critical to the evaluation;
- sufficient experience has not yet developed to determine the average reemployment time (3.5 years was assumed in the study, sensitivity is shown by showing results on three years);
- the level of reemployment pay is critical to the evaluation;
- on average, reemployment pay appears to be significantly lower than pre-retirement pay;
- PERA has expressed concerns about sufficient reporting of reemployed retirees;
- based on information that is currently available, the actuary recommends that PERA collect contributions on all reemployment pay equal to the sum of the statutory employer rate and the statutory employee rate for the plan in which the reemployed retiree's position would be eligible for participation;
- based on the study, it is expected that the recommended contribution rate will result in assets that cover between 96 percent and 111 percent of the costs generated by the retirees who have returned to work;
- PERA's actuary recommends continued periodic studying of the return-to-work program to coincide with the four-year experience study;

- PERA's actuary recommends collecting data specific to the length of reemployment for return-to-work members; and
- accurate data is critical to an accurate evaluation, and PERA must rely on employers to report accurate data.

Representative Lundstrom asked how many "return-to-work employees" are state employees and how many are municipal.

Senator Smith suggested adding a requirement to the appropriations bill that would require return-to-work employees to contribute to the retirement system.

Consideration of Draft Legislation

-Cleo Griffith, LCS

Regarding the ERB composition, Senator Smith suggested that rather than adding a representative from the New Mexico Federation of Educational Employees (NMFEE) to the ERB, the additional member should simply be someone representing teachers. Representative Heaton asked about the mechanism for appointing a general teacher's representative. Senator Smith suggested that teacher organizations would nominate a representative and the governor would then appoint that person.

Carter Bundy, representing the American Federation of State, County and Municipal Employees (AFSCME) Union, wants to see university employees represented on the ERB and not another governor's appointee.

Representative Heaton suggested that the NMFEE be deleted from the bill draft and a governor's appointee representing teachers be substituted. He also suggested that the representative should have five years of investment experience.

Senator Rawson suggested that such an experience requirement would be excessively restrictive when applied to active teachers.

Robert Schulman, ERB general counsel, asked to pass over the legislation and allow ERB to continue to work with the LFC in developing recommendations with respect to the ERB composition.

Senator Rawson noted the absence of a quorum of voting members.

The committee did not endorse draft 202.164424.

Regarding creation of a permanent committee, the committee endorsed draft 202.164419.

Regarding return to work, Mr. Bundy stated that ASFCME is opposed to return to work. Jeff Varela, PERA board member, said that the draft legislation creates a disparity between state and municipal employees.

Senator Griego indicated that he believes there should be a definition of "critical position".

Representative Stell noted that the bill draft would terminate return to work for conservation districts.

Representative Bratton supports the "critical position" concept and would like to add a time limit.

A quorum was reestablished.

The committee endorsed draft 202.164420.

Mark Valdez, deputy state treasurer, explained the initiative to expand the Short-Term Investment Fund. The initiative would open the fund to tribal governments and other political subdivisions.

Representative Bratton asked if the state would be subject to legal action if a tribal government lost money by investing in the proposed Short-Term Investment Fund. Mr. Lewis stated that the issue would be addressed before the bill is introduced.

Representative Varela asked if the State Treasurer's Office is being given the authority to invest in mutual funds by the proposed legislation. It was noted that the State Treasurer's Office is currently investing in money market mutual funds with the approval of the State Board of Finance.

The committee endorsed draft number 202.164421 with two amendments that would make appropriations subject to the appropriations process and fees subject to LFC review.

With respect to the creation of an irrevocable retiree health care trust, Senator Carraro believes the language should be strengthened with respect to the admonition that the legislature is not creating a property right concerning retiree benefits.

Representative Stell suggested that the creation of an irrevocable trust should be accomplished through a constitutional amendment.

The committee endorsed draft number 202.163149.

With respect to memorial concerning the Severance Tax Permanent Fund "sweep", the committee endorsed the proposal and instructed that the memorial be made into a bill.

With respect to the memorial concerning a moratorium on enhancement benefits, Mr. Bundy stated that AFSCME is opposed to the moratorium and would not make a proposal to enhance benefits that would be actuarially unsound. Paula Fisher, representing juvenile correction officers, stated that the officers are requesting 20-year retirement and will be introducing a bill to that effect.

The committee endorsed draft 202.164423.

Robert Schulman explained that ERB would like to change the retirement contribution calculation for upper-income persons to conform to the Internal Revenue Service cap of \$200,000.

The committee did not endorse the proposed legislation.

Other Business

There was no other business brought before the committee.

The committee adjourned at 2:00 p.m.

Appendix C

Draft Legislation Endorsed by the Committee

BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

CREATING A JOINT INTERIM LEGISLATIVE COMMITTEE TO OVERSEE STATE
INVESTMENTS AND RETIREMENT SYSTEMS; MAKING AN APPROPRIATION;
DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. STATE INVESTMENT AND RETIREMENT SYSTEMS
OVERSIGHT COMMITTEE CREATED.--The "state investment and
retirement systems oversight committee" is created as a joint
interim legislative committee.

Section 2. MEMBERSHIP--APPOINTMENT--VACANCIES.--

A. The state investment and retirement systems
oversight committee shall be composed of ten voting members and
five nonvoting members.

B. Five members of the house of representatives
shall be appointed as voting members of the committee by the

.164419.1

1 speaker of the house of representatives, and five members of
2 the senate shall be appointed as voting members of the
3 committee by the committees' committee of the senate or, if the
4 senate appointments are made in the interim, by the president
5 pro tempore of the senate after consultation with and agreement
6 of a majority of the members of the committees' committee.
7 Members shall be appointed from each house so as to give the
8 two major political parties in each house the same
9 proportionate representation on the committee as prevails in
10 each house. An appointed member may designate a legislator
11 from the member's party to serve in the member's place at a
12 committee meeting at which the member is going to be absent.
13 The member shall select the designee from a list of four
14 potential designees from each house, appointed in the same
15 manner as the appointment of the members.

16 C. The five nonvoting members of the committee
17 shall be: the state investment officer or the officer's
18 designee; the secretary of finance and administration or the
19 secretary's designee; the state treasurer or the treasurer's
20 designee; the investment director of the public employees
21 retirement association or the director's designee; and the
22 chief investment officer of the educational retirement board or
23 the officer's designee.

24 D. Vacancies on the committee shall be filled by
25 appointment in the same manner as the original appointments.

1 The speaker of the house of representatives and the president
2 pro tempore of the senate shall each designate one co-chair of
3 the committee.

4 E. No action shall be taken by the committee if a
5 majority of the total membership from either house on the
6 committee rejects such action.

7 Section 3. POWERS AND DUTIES.--After its appointment, the
8 state investment and retirement systems oversight committee
9 shall hold one organizational meeting to develop a work plan
10 and budget for the ensuing interim. The work plan and budget
11 shall be submitted to the New Mexico legislative council for
12 approval. Upon approval of the work plan and budget by the
13 legislative council, the committee shall:

14 A. monitor and oversee the investment and financial
15 management practices used by the state investment council, the
16 state board of finance and the state treasurer with respect to
17 all public funds, including the permanent funds, and by the
18 public employees retirement association and the educational
19 retirement board with respect to their retirement funds;

20 B. undertake a continuing analysis of the financial
21 and actuarial status of the retirement systems, including the
22 benefit structure, of the public employees retirement
23 association and the educational retirement board;

24 C. develop recommendations as appropriate to
25 improve state investment practices and to ensure the financial

1 and actuarial soundness of the retirement funds;

2 D. make referrals of matters needing further
3 attention to the appropriate public official, agency, oversight
4 board or the attorney general for investigation, corrective
5 action and penalties if warranted;

6 E. request that all proposed legislation affecting
7 state investment practices, the permanent funds or the
8 retirement funds be presented to the committee for review and
9 analysis in the interim prior to the legislative session in
10 which the legislation will be introduced; and

11 F. report to the legislature prior to the start of
12 each regular legislative session any recommendations that the
13 committee may have for legislative action.

14 Section 4. ASSISTANCE TO COMMITTEE.--The public employees
15 retirement association, the educational retirement board, the
16 state investment council, the department of finance and
17 administration and the state treasurer shall assist the
18 committee in the performance of its duties and shall make
19 available records and information requested.

20 Section 5. STAFF.--The staff for the state investment and
21 retirement systems oversight committee shall be provided by the
22 legislative council service, but actuarial and other outside
23 consultants are authorized as necessary to assist the committee
24 in carrying out its duties.

25 Section 6. APPROPRIATION.--One hundred fifty thousand

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1 dollars (\$150,000) is appropriated from the general fund to the
2 legislative council service for expenditure in fiscal years
3 2007 and 2008 for the purpose of paying for technical and legal
4 assistance and actuarial and other outside consultants to
5 assist the state investment and retirement systems oversight
6 committee, for necessary equipment and supplies used in
7 carrying out the provisions of this act and for reimbursing the
8 per diem and mileage expenses of the committee. Any unexpended
9 or unencumbered balance remaining at the end of fiscal year
10 2008 shall revert to the general fund. Payments from the
11 appropriation shall be made upon vouchers signed by the
12 director of the legislative council service or the director's
13 authorized representative.

14 Section 7. EMERGENCY.--It is necessary for the public
15 peace, health and safety that this act take effect immediately.

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BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO RETURN TO EMPLOYMENT; AMENDING PROVISIONS OF THE
PUBLIC EMPLOYEES RETIREMENT ACT AND THE EDUCATIONAL RETIREMENT
ACT CONCERNING RETIREES WHO RETURN TO EMPLOYMENT; RECONCILING
MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2003;
RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN
LAWS 2004 BY REPEALING LAWS 2004, CHAPTER 2, SECTION 1.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 10-11-8 NMSA 1978 (being Laws 1987,
Chapter 253, Section 8, as amended by Laws 2004, Chapter 2,
Section 1 and by Laws 2004, Chapter 68, Section 4) is amended
to read:

"10-11-8. NORMAL RETIREMENT--RETURN TO EMPLOYMENT--
BENEFITS CONTINUED FOR CERTAIN RETIRED MEMBERS--EMPLOYER
CONTRIBUTIONS.--

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underscored material = new
[bracketed material] = delete

1 A. A member may retire upon fulfilling the
2 following requirements prior to the selected date of
3 retirement:

4 (1) a written application for normal
5 retirement, in the form prescribed by the association, is filed
6 with the association;

7 (2) employment is terminated with all
8 employers covered by any state system or the educational
9 retirement system;

10 (3) the member selects an effective date of
11 retirement that is the first day of a calendar month; and

12 (4) the member meets the age and service
13 credit requirement for normal retirement specified in the
14 coverage plan applicable to the member.

15 B. The amount of normal retirement pension is
16 determined in accordance with the coverage plan applicable to
17 the member.

18 C. Except as provided in Subsection D, ~~[or]~~ E or F
19 of this section, a retired member may be subsequently employed
20 by an affiliated public employer if the following conditions
21 apply:

22 (1) either the subsequent employment of the
23 retired member commences prior to July 1, 2007 or the
24 affiliated public employer is a municipality or county whose
25 governing body has adopted a resolution declaring that the

1 subsequent employment of the retired member will fill a
2 critical need of the municipality or county;

3 ~~[(1)]~~ (2) the member has not been employed as
4 an employee of an affiliated public employer for at least
5 ninety consecutive days from the date of retirement to the
6 commencement of employment or re-employment with an affiliated
7 public employer. If the retired member returns to employment
8 without first completing ninety consecutive days of
9 retirement:

10 (a) the retired member's pension shall
11 be suspended immediately and the previously retired member
12 shall become a member; and

13 (b) upon termination of the subsequent
14 employment, the previously retired member's pension shall be
15 calculated pursuant to Paragraph (2) of Subsection [E] G of
16 this section;

17 ~~[(2) effective the first day of the month~~
18 ~~following the month in which the retired member's earnings~~
19 ~~total twenty-five thousand dollars (\$25,000) during a calendar~~
20 ~~year, a retired member who returns to employment shall be~~
21 ~~required to make contributions to the fund as specified in the~~
22 ~~Public Employees Retirement Act; provided, however, that after~~
23 ~~December 31, 2006, no additional contributions shall be~~
24 ~~required pursuant to this paragraph;]~~

25 (3) until the subsequent employment is

1 terminated, the affiliated public employer that employs the
2 retired member shall make contributions to the fund in the
3 amount specified in the Public Employees Retirement Act or in a
4 higher amount adjusted for full actuarial cost as determined
5 annually by the association; and

6 (4) a retired member who returns to employment
7 during retirement pursuant to this subsection is entitled to
8 receive retirement benefits but is not entitled to acquire
9 service credit or to acquire or purchase service credit in the
10 future for the period of the retired member's re-employment
11 with an affiliated public employer.

12 D. If a member retires and is subsequently employed
13 by an affiliated public employer on or after July 1, 2007, the
14 retired member's pension shall be suspended the first day of
15 the month following the month in which the retired member's
16 earnings for a calendar year from that subsequent employment
17 exceed fifteen thousand dollars (\$15,000).

18 ~~[D.] E.~~ The provisions of ~~[Paragraphs (2) and]~~
19 Paragraph (3) of Subsection C of this section ~~[that require~~
20 ~~employee or employer contributions]~~ and the provisions of
21 Subsection D of this section do not apply to:

22 (1) a retired member who is appointed chief of
23 police of an affiliated public employer, other than the
24 affiliated public employer from which the retired member
25 retired, or who is appointed undersheriff; provided that:

1 (a) the retired member files an
2 irrevocable exemption from membership with the association
3 within thirty days of appointment;

4 (b) each sheriff's office shall be
5 limited to one undersheriff qualifying pursuant to this
6 paragraph;

7 (c) the irrevocable exemption shall be
8 for the chief of police's or the undersheriff's term of office;
9 and

10 (d) filing an irrevocable exemption
11 shall irrevocably bar the retired member from acquiring service
12 credit for the period of exemption from membership; or

13 (2) a retired member employed by the
14 legislature for legislative session work.

15 ~~[E.]~~ F. At any time during a retired member's
16 subsequent employment pursuant to Subsection C or D of this
17 section, the retired member may elect to suspend the pension.
18 ~~[When the pension is suspended, the following conditions shall~~
19 ~~apply]~~

20 G. When a pension is suspended pursuant to
21 Subparagraph (a) of Paragraph (2) of Subsection C of this
22 section, Subsection D of this section or Subsection F of this
23 section, the following conditions apply:

24 (1) the retired member who is subsequently
25 employed by an affiliated public employer shall become a

1 member. The previously retired member and the subsequent
2 affiliated public employer shall make the required employee and
3 employer contributions, and the previously retired member shall
4 accrue service credit for the period of subsequent employment;
5 and

6 (2) when a previously retired member
7 terminates the subsequent employment with an affiliated public
8 employer, ~~[he]~~ the previously retired member shall retire
9 according to the provisions of the Public Employees Retirement
10 Act, subject to the following conditions:

11 (a) payment of the pension shall resume
12 in accordance with the provisions of Subsection A of this
13 section;

14 (b) unless the previously retired member
15 accrued at least three years of service credit on account of
16 the subsequent employment, the recalculation of pension shall:
17 1) employ the form of payment selected by the previously
18 retired member at the time of the first retirement; and 2) use
19 the provisions of the coverage plan applicable to the member on
20 the date of the first retirement; and

21 (c) the recalculated pension shall not
22 be less than the amount of the suspended pension.

23 ~~[F.]~~ H. The pension of a member who has three or
24 more years of service credit under each of two or more coverage
25 plans shall be determined in accordance with the coverage plan

1 that produces the highest pension. The pension of a member who
2 has service credit under two or more coverage plans but who has
3 three or more years of service credit under only one of those
4 coverage plans shall be determined in accordance with the
5 coverage plan in which the member has three or more years of
6 service credit. If the service credit is acquired under two
7 different coverage plans applied to the same affiliated public
8 employer as a consequence of an election by the members,
9 adoption by the affiliated public employer or a change in the
10 law that results in the application of a coverage plan with a
11 greater pension, the greater pension shall be paid a member
12 retiring from the affiliated public employer under which the
13 change in coverage plan took place regardless of the amount of
14 service credit under the coverage plan producing the greater
15 pension; provided the member has three or more years of
16 continuous employment with that affiliated public employer
17 immediately preceding or immediately preceding and immediately
18 following the date the coverage plan changed. The provisions
19 of each coverage plan for the purpose of this subsection shall
20 be those in effect at the time the member ceased to be covered
21 by the coverage plan. "Service credit", for the purposes of
22 this subsection, shall be only personal service rendered an
23 affiliated public employer and credited to the member under the
24 provisions of Subsection A of Section 10-11-4 NMSA 1978.
25 Service credited under any other provision of the Public

.164420.1

1 Employees Retirement Act shall not be used to satisfy the
2 three-year service credit requirement of this subsection."

3 Section 2. Section 22-11-25.1 NMSA 1978 (being Laws 2001,
4 Chapter 283, Section 2, as amended by Laws 2003, Chapter 80,
5 Section 1 and by Laws 2003, Chapter 145, Section 1) is amended
6 to read:

7 "22-11-25.1. RETURN TO EMPLOYMENT--BENEFITS CONTINUED FOR
8 CERTAIN MEMBERS--ADMINISTRATIVE UNIT CONTRIBUTIONS.--

9 A. Except as provided in Subsections B and E of
10 this section, [~~beginning January 1, 2002 and continuing until~~
11 ~~January 1, 2012~~] a retired member may begin employment at a
12 local administrative unit and shall not be required to suspend
13 retirement benefits if:

14 (1) the employment of the retired member
15 begins prior to July 1, 2007 or, if the employment begins on or
16 after July 1, 2007, the local administrative unit has adopted a
17 resolution declaring that the employment of the retired member
18 will fill a critical need of the local administrative unit; and

19 (2) the member has not been employed as an
20 employee or independent contractor by a local administrative
21 unit for at least twelve consecutive months from the date of
22 retirement to the commencement of employment or reemployment
23 with a local administrative unit. If the retired member
24 returns to employment without first completing twelve
25 consecutive months of retirement, the retired member shall

.164420.1

1 remove himself from retirement.

2 B. A retired member who was retired on or before
3 January 1, 2001, has not since suspended or been required to
4 suspend retirement benefits pursuant to the Educational
5 Retirement Act and is reemployed by a local administrative unit
6 prior to July 1, 2007 may continue employment at the local
7 administrative unit and shall not be required to suspend
8 retirement benefits.

9 C. A retired member who returns to employment
10 during retirement pursuant to Subsection A, ~~[or]~~ B or E of this
11 section is entitled to continue to receive retirement benefits
12 but is not entitled to acquire service credit or to acquire or
13 purchase service credit in the future for the period of the
14 retired member's reemployment with a local administrative unit.

15 D. A retired member who returns to employment
16 pursuant to ~~[Subsections]~~ Subsection A, ~~[or]~~ B or E of this
17 section shall not make contributions to the fund as specified
18 in the Educational Retirement Act; however, the local
19 administrative unit's contributions as specified in that act
20 shall be paid to the fund as if the retired member was a non-
21 retired employee.

22 E. Beginning July 1, 2003 and continuing ~~[until~~
23 ~~January 1, 2012]~~ through July 1, 2007, a retired member who
24 retired on or before January 1, 2001 and who has not been
25 employed as an employee or independent contractor by a local

1 administrative unit for at least ninety days may begin
2 employment at a local administrative unit without suspending
3 retirement benefits if the retired member was not employed by a
4 local administrative unit for an additional twelve or more
5 consecutive months after the initial date of the retirement;
6 provided that the ninety-day period shall not include any part
7 of a summer or other scheduled break or vacation period.

8 F. A retired member who returns to employment with
9 a local administrative unit and, pursuant to the provisions of
10 this section, is entitled to continue to receive retirement
11 benefits shall not be required to suspend retirement benefits
12 at any time in the future if the member remains employed by the
13 local administrative unit or is employed by another local
14 administrative unit; provided, however, that if the member
15 voluntarily suspends retirement benefits at any time, the
16 member shall be entitled to continue to receive retirement
17 benefits pursuant to the provisions of this section only if the
18 member would be eligible to do so based upon the effective date
19 of the member's most recent retirement."

20 Section 3. REPEAL.--Laws 2004, Chapter 2, Section 1 is
21 repealed.

BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PUBLIC FUNDS; CLARIFYING THE PROVISION REGARDING
INVESTMENTS OF PUBLIC FUNDS OF LOCAL GOVERNING BODIES AND OTHER
ELIGIBLE GOVERNING BODIES; EXPANDING PARTICIPATION OF
PARTICIPATING GOVERNMENTS IN CERTAIN INVESTMENT FUNDS; AMENDING
SECTIONS OF THE NMSA 1978; MAKING APPROPRIATIONS; DECLARING AN
EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 6-10-1.1 NMSA 1978 (being Laws 1987,
Chapter 79, Section 3, as amended) is amended to read:

"6-10-1.1. DEFINITIONS.--As used in Chapter 6, Article 10
NMSA 1978:

A. "deposit" includes share, share certificate and
share draft;

B. "department" means the department of finance and

.164421.1

1 administration; ~~and~~

2 C. "eligible governing body" means a local
3 governing body, the governing authority of a tribe or any other
4 governmental or quasi-governmental body created or authorized
5 to be created pursuant to New Mexico statutes;

6 D. "finance officer" means the chief financial
7 officer of an eligible governing body or a participating
8 government;

9 E. "local governing body" means a political
10 subdivision of the state, including a school district or a
11 post-secondary educational institution;

12 F. "participating government" means an eligible
13 governing body or the state treasurer on behalf of the general
14 fund that has invested money in the participating government
15 investment fund;

16 ~~[G.]~~ G. "secretary" means the secretary of finance
17 and administration; and

18 H. "tribe" means a federally recognized Indian
19 nation, tribe or pueblo or a subdivision or agency of a
20 federally recognized Indian nation, tribe or pueblo, located
21 wholly or partially in New Mexico."

22 Section 2. Section 6-10-10.1 NMSA 1978 (being Laws 1988,
23 Chapter 61, Section 2, as amended) is amended to read:

24 "6-10-10.1. ~~[SHORT-TERM]~~ PARTICIPATING GOVERNMENT
25 INVESTMENT FUND CREATED--DISTRIBUTION OF EARNINGS--REPORT OF

.164421.1

1 INVESTMENTS.--

2 A. There is created in the state treasury the
3 ~~[short-term]~~ "participating government investment fund". The
4 fund shall consist of all deposits from ~~[governmental entities~~
5 ~~and Indian tribes or pueblos]~~ participating governments,
6 including revenues dedicated to repaying bonds that are placed
7 in the custody of the state treasurer for ~~[short-term]~~
8 investment purposes pursuant to this section. The state
9 treasurer shall maintain ~~[a]~~ one or more separate ~~[account]~~
10 accounts for each ~~[governmental entity and Indian tribe or~~
11 ~~pueblo]~~ participating government having deposits in the
12 participating government investment fund and may divide the
13 fund into two or more subfunds, as the state treasurer deems
14 appropriate, for short-term and medium-term investment
15 purposes, including one or more subfunds for bond proceeds
16 deposited by participating governments.

17 B. If ~~[a local public body]~~ an eligible governing
18 body is unable to receive payment on public money at the rate
19 of interest as set forth in Section 6-10-36 NMSA 1978 from
20 financial institutions within the geographic boundaries of the
21 ~~[governmental unit]~~ eligible governing body, or if the eligible
22 governing body is not bound by the terms of Section 6-10-36
23 NMSA 1978, [then a local public] the finance [official] officer
24 having control of the money of that [local public] eligible
25 governing body [in that official's custody] not required for

1 current expenditure may, with the consent of the [~~appropriate~~
2 ~~local~~] board of finance [~~if any~~] of the eligible governing body
3 if consent is required by the laws or rules of the eligible
4 governing body, remit some or all of [~~such~~] the money to the
5 state treasurer for deposit for the purpose of [~~short-term~~]
6 investment as allowed by this section.

7 C. Before [~~local~~] funds are invested or reinvested
8 [~~for the purpose of short-term investment~~] pursuant to this
9 section, [~~the local public body~~] a finance [~~official~~] officer
10 shall notify and make [~~such~~] the funds available for investment
11 to banks, savings and loan associations and credit unions
12 located within the geographical boundaries of [~~their respective~~
13 ~~governmental unit~~] the participating government or the eligible
14 governing body, subject to the limitation on credit union
15 accounts. To be eligible for [~~such~~] deposit of the government
16 funds, the financial institution shall pay to the [~~local public~~
17 ~~body~~] participating government or eligible governing body the
18 rate established by the state treasurer pursuant to a policy
19 adopted by the state board of finance for [~~such short-term~~] the
20 investments.

21 D. [~~The local public body~~] A finance [~~official~~]
22 officer shall specify the length of time a deposit shall be in
23 the [~~short-term~~] participating government investment fund [~~but~~
24 ~~in any event the deposit shall not be made for more than one~~
25 ~~hundred eighty-one days~~]. The state treasurer through the use

1 of the state fiscal agent shall separately track each [~~such~~]
2 deposit and shall make [~~such~~] information regarding the deposit
3 available to the public upon written request.

4 E. The state treasurer shall invest the [~~short-~~
5 ~~term~~] participating government investment fund as provided [~~for~~
6 ~~state funds under~~] in Section 6-10-10 NMSA 1978 regarding the
7 investment of state funds in investments with a maturity at the
8 time of purchase that does not exceed three [~~hundred ninety-~~
9 ~~seven days~~] years. The state treasurer may elect to have the
10 [~~short-term~~] participating government investment fund
11 consolidated for investment purposes with the state funds under
12 the control of the state treasurer; provided that accurate and
13 detailed accounting records are maintained for the account of
14 each participating [~~entity and Indian tribe or pueblo~~]
15 government and that a proportionate amount of interest earned
16 is credited to each of the separate [~~government~~] accounts of a
17 participating government. The fund shall be invested to
18 achieve its objective, which is to realize the maximum return
19 consistent with safe and prudent management.

20 F. At the end of each month, all net investment
21 income or losses from investment of the [~~short-term~~]
22 participating government investment fund shall be distributed
23 by the state treasurer to the [~~contributing entities and Indian~~
24 ~~tribes or pueblos~~] accounts of participating governments in
25 amounts directly proportionate to the respective amounts

1 deposited by them in the participating government investment
2 fund and the length of time the amounts in ~~[the fund]~~ each
3 account were invested.

4 G. The state treasurer shall charge participating
5 ~~[entities, Indian tribes and pueblos]~~ governments reasonable
6 audit, administrative and investment expenses ~~[to be paid]~~ and
7 shall deduct those expenses directly from ~~[their]~~ the net
8 investment income for the investment and administrative
9 services provided pursuant to this ~~[section]~~ subsection. The
10 amount of the charges, the manner of the use by the state
11 treasurer and the nature of bond-related services to be offered
12 shall be established in rules adopted and promulgated by the
13 state treasurer.

14 H. Amounts deducted from the accounts of
15 participating governments for charges permitted pursuant to
16 this section are appropriated to the state treasurer to be
17 expended in fiscal year 2007 and in subsequent fiscal years for
18 the administration and management of the participating
19 government investment fund, services provided to participating
20 governments related to investment of their money in that fund
21 and other services authorized by this section. Balances
22 remaining at the end of a fiscal year from the amounts deducted
23 pursuant to this section shall not revert to the general fund
24 but shall remain in the state treasurer's operating account and
25 are restricted for use as specified in this subsection.

1 Balances in the state treasurer's operating account resulting
2 from deductions taken pursuant to this section in excess of the
3 amount required to provide administration, management and
4 related services required by this subsection or other services
5 authorized by this section shall be offset by reductions in the
6 charges made by the state treasurer to the accounts of
7 participating governments in subsequent deductions from
8 participating governments' accounts.

9 ~~[G.]~~ I. Investments of the ~~[short-term]~~
10 participating government investment fund shall be made in such
11 a manner that the portion of the fund invested in short-term
12 investments maintains a "AA" or higher rating. Each fiscal
13 year and at such other times as directed by the state board of
14 finance, the state treasurer shall cause to have the short-term
15 investment portion of the participating government investment
16 fund rated by a nationally recognized statistical rating
17 organization. If the rating received by the short-term
18 investment portion of the fund is lower than "AA", the state
19 treasurer shall immediately submit a plan to the state board of
20 finance detailing the steps that will be taken to obtain a "AA"
21 or higher rating.

22 ~~[H. As used in this section, "local public body"~~
23 ~~means a political subdivision of the state, including school~~
24 ~~districts and post-secondary educational institutions.~~

25 ~~I. In addition to the deposit of funds of local~~

1 ~~public bodies, the state treasurer may also accept for deposit,~~
2 ~~deposit and account for, in the same manner as funds of local~~
3 ~~public bodies, funds of the following governmental entities if~~
4 ~~the governing authority of the entity approves by resolution~~
5 ~~the deposit of the funds for the short-term investment:~~

6 ~~(1) the agricultural commodity commission~~
7 ~~established under the Agricultural Commodity Commission Act;~~

8 ~~(2) the Albuquerque metropolitan arroyo flood~~
9 ~~control authority established under the Arroyo Flood Control~~
10 ~~Act;~~

11 ~~(3) the business improvement district~~
12 ~~management committee established under the Business Improvement~~
13 ~~District Act;~~

14 ~~(4) the New Mexico community development~~
15 ~~council established under the New Mexico Community Assistance~~
16 ~~Act;~~

17 ~~(5) the governing authority of only special~~
18 ~~districts authorized under Chapter 73 NMSA 1978;~~

19 ~~(6) the board of trustees established under~~
20 ~~the Economic Advancement District Act;~~

21 ~~(7) the board of directors of a corporation or~~
22 ~~foundation established under the Educational Assistance Act;~~

23 ~~(8) a board of directors established under the~~
24 ~~Flood Control District Act;~~

25 ~~(9) the New Mexico hospital equipment loan~~

1 ~~council established under the Hospital Equipment Loan Act;~~
2 ~~(10) the authority established under the~~
3 ~~Industrial and Agricultural Finance Authority Act;~~
4 ~~(11) the authority established under the Las~~
5 ~~Cruces Arroyo Flood Control Act;~~
6 ~~(12) the authority established under the~~
7 ~~Mortgage Finance Authority Act;~~
8 ~~(13) the authority established under the~~
9 ~~Municipal Mortgage Finance Act;~~
10 ~~(14) the authority established under the~~
11 ~~Public School Insurance Authority Act;~~
12 ~~(15) the authority established under the~~
13 ~~Southern Sandoval County Arroyo Flood Control Act;~~
14 ~~(16) a board of trustees established under the~~
15 ~~Special Hospital District Act;~~
16 ~~(17) the authority established under the~~
17 ~~New Mexico Finance Authority Act; and~~
18 ~~(18) the corporation established under the~~
19 ~~Small Business Investment Act.~~

20 ~~J. In addition to the deposit of funds of local~~
21 ~~public bodies, the state treasurer may also accept for deposit~~
22 ~~and deposit and account for, in the same manner as funds of~~
23 ~~local public bodies, funds of any Indian tribe or pueblo in the~~
24 ~~state if authorized to do so under a joint powers agreement~~
25 ~~executed by the state treasurer and the governing authority of~~

1 ~~the Indian tribe or pueblo under the provisions of the Joint~~
2 ~~Powers Agreements Act.]~~

3 J. The state treasurer may offer to provide to
4 participating governments services related to requirements of
5 the federal income tax laws applicable to the investment of
6 bond proceeds.

7 K. A tribe or quasi-governmental body created
8 pursuant to New Mexico statute may become a participating
9 government only if the governing authority of the tribe or
10 quasi-governmental body has adopted a resolution authorizing
11 the tribe or quasi-governmental body to remit money to the
12 state treasurer for investment in the participating government
13 investment fund.

14 L. Deposits by the state treasurer on behalf of the
15 general fund shall not exceed five percent of the total amount
16 in the participating government investment fund at any time."

17 Section 3. EMERGENCY.--It is necessary for the public
18 peace, health and safety that this act take effect immediately.

HOUSE BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PUBLIC FINANCE; DESIGNATING THE RETIREE HEALTH CARE
FUND AS AN IRREVOCABLE TRUST.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 10-7C-1 NMSA 1978 (being Laws 1990,
Chapter 6, Section 1) is amended to read:

"10-7C-1. SHORT TITLE.--~~[Sections 1 through 16 of this~~
~~act]~~ Chapter 10, Article 7C NMSA 1978 may be cited as the
"Retiree Health Care Act"."

Section 2. Section 10-7C-3 NMSA 1978 (being Laws 1990,
Chapter 6, Section 3) is amended to read:

"10-7C-3. LEGISLATIVE FINDINGS AND DECLARATION OF
POLICY.--

A. The legislature finds and declares that public
employees face a severe problem in securing continuing medical

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underscored material = new
[bracketed material] = delete

1 insurance when they retire. Medical care inflation has far
2 exceeded the general inflation rate for the past decade. It is
3 expected that at least some of the factors that have
4 contributed to this phenomenon will continue into the
5 foreseeable future. As the public employee population grows
6 older, the ratio of retirees to active employees is expected to
7 continue to rise. This factor will be exacerbated as the life
8 expectancy of the aged improves and the post-world war two
9 generation approaches retirement age. Financial problems faced
10 by the federal medicare system are becoming more serious, and
11 it is apparent that there will be attempts to shift those costs
12 to the public employer and employee. More such cost shifting
13 is likely, and one of the purposes of the Retiree Health Care
14 Act is, within the constraints of what can be afforded by the
15 taxpayers, to alleviate this burden on the retiree as much as
16 possible.

17 B. The legislature further finds and declares that
18 the public employees covered by the Retiree Health Care Act
19 have entered into public employment in circumstances where they
20 have received in exchange for their services a present salary
21 and an expectation of receiving a future stream of benefits,
22 including payment of certain retirement benefits. The
23 legislature declares that the expectation of receiving future
24 benefits may be modified from year to year in order to respond
25 to changing financial exigencies, but that such modification

1 must be reasonably calculated to result in the least possible
2 detriment to the expectation and to be consistent with any
3 employer-employee relationship established to meet that
4 expectation. The legislature does not intend for the Retiree
5 Health Care Act to create trust relationships among the
6 participating employees, retirees, employers and the authority
7 administering the Retiree Health Care Act, ~~[nor does]~~ except
8 for the designation of the retiree health care fund as an
9 irrevocable trust as provided in Section 10-7C-8 NMSA 1978.
10 The legislature does not intend to create contract rights
11 ~~[which]~~ that may not be modified or extinguished in the future;
12 rather the legislature intends to create, through the Retiree
13 Health Care Act, a means for maximizing health care services
14 returned to the participants for their participation under the
15 Retiree Health Care Act.

16 C. The legislature further finds and declares that
17 nothing in the Retiree Health Care Act shall prohibit the
18 legislature from increasing or decreasing participating
19 employer and employee contributions, eligible retiree premiums
20 or group health insurance coverages or plans and that
21 participation in the Retiree Health Care Act by retired and
22 active public employees shall not be construed to establish
23 rights between the retired and active public employees and the
24 state for health care benefits ~~[which]~~ that cannot be modified
25 or extinguished in the future to meet changes in economic or

1 social conditions.

2 D. The legislature further finds and declares that
3 the health care coverage provided under the Retiree Health Care
4 Act shall constitute a state group health insurance plan,
5 separate subsequent state group health insurance plan, state
6 group insurance plan, separate subsequent state group insurance
7 plan, state medical group insurance plan and separate
8 subsequent state medical group insurance plan for the purposes
9 of Sections 10-11-121, [~~10-12-15, 10-12A-11~~] 10-12B-16,
10 10-12C-15 and 22-11-41 NMSA 1978.

11 E. The legislature further finds and declares that
12 participation of current retirees in the Retiree Health Care
13 Act is predicated on *State ex rel. Hudgins v. Public Employees*
14 *Retirement Board* 58 N.M. 543, 273 P.2d 543 (1954); the
15 additional monthly participation fee to be paid by current
16 retirees as a condition of participation in the Retiree Health
17 Care Act is in lieu of the lump-sum consideration paid by the
18 retirees who were the relators in that case."

19 Section 3. Section 10-7C-6 NMSA 1978 (being Laws 1990,
20 Chapter 6, Section 6, as amended) is amended to read:

21 "10-7C-6. BOARD CREATED--MEMBERSHIP--AUTHORITY.--

22 A. There is created the "board of the retiree health
23 care authority". The board shall be composed of not more than
24 twelve members, who shall be the trustees of the retiree health
25 care fund and shall have the sole and exclusive fiduciary duty

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1 and responsibility for administration and investment of the
2 fund.

3 B. The board shall include:

4 (1) one member who is not employed by or on
5 behalf of or contracting with an employer participating in or
6 eligible to participate in the Retiree Health Care Act and who
7 shall be appointed by the governor to serve at the pleasure of
8 the governor;

9 (2) the educational retirement director or the
10 educational retirement director's designee;

11 (3) one member to be selected by the public
12 school superintendents' association of New Mexico;

13 (4) one member who is a teacher who is certified
14 and teaching in elementary or secondary education to be
15 selected by a committee composed of one person designated by
16 the New Mexico association of classroom teachers, one person
17 designated by the national education association of New Mexico
18 and one person designated by the New Mexico federation of
19 teachers;

20 (5) one member who is an eligible retiree of a
21 public school and who is selected by the New Mexico association
22 of retired educators;

23 (6) the executive secretary of the public
24 employees retirement association or the executive secretary's
25 designee;

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1 (7) one member who is an eligible retiree
2 receiving a benefit from the public employees retirement
3 association and who is selected by the retired public employees
4 of New Mexico;

5 (8) one member who is an elected official or
6 employee of a municipality participating in the Retiree Health
7 Care Act and who is selected by the New Mexico municipal
8 league;

9 (9) the state treasurer or the state treasurer's
10 designee; and

11 (10) one member who is a classified state
12 employee selected by the personnel board.

13 C. The board, in accordance with the provisions of
14 Paragraph (3) of Subsection D of Section 10-7C-9 NMSA 1978,
15 shall include, if they qualify:

16 (1) one member who is an eligible retiree of an
17 institution of higher education participating in the Retiree
18 Health Care Act and who is selected by the New Mexico
19 association of retired educators; and

20 (2) one member who is an elected official or
21 employee of a county participating in the Retiree Health Care
22 Act and who is selected by the New Mexico association of
23 counties.

24 D. Every member of the board shall serve at the
25 pleasure of the party that selected that member.

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1 E. The members of the board shall begin serving their
2 positions on the board on the effective date of the Retiree
3 Health Care Act or upon their selection, whichever occurs last,
4 unless that member's corresponding position on the board has
5 been eliminated pursuant to Subsection D of Section 10-7C-9
6 NMSA 1978.

7 F. The board shall elect from its membership a
8 president, vice president and secretary.

9 G. The board may appoint such officers and advisory
10 committees as it deems necessary. The board may enter into
11 contracts or arrangements with consultants, professional
12 persons or firms as may be necessary to carry out the
13 provisions of the Retiree Health Care Act.

14 H. The members of the board and its advisory
15 committees shall receive per diem and mileage as provided in
16 the Per Diem and Mileage Act but shall receive no other
17 compensation, perquisite or allowance."

18 Section 4. Section 10-7C-8 NMSA 1978 (being Laws 1990,
19 Chapter 6, Section 8) is amended to read:

20 "10-7C-8. FUND CREATED--INVESTMENT--PREMIUMS--
21 APPROPRIATION.--

22 A. There is created the "retiree health care fund",
23 which shall be an irrevocable trust. All money deposited in
24 the fund, earned from investment of the fund or otherwise
25 accruing to the fund shall be held in trust for the sole and

1 exclusive purpose of providing health care benefits to eligible
2 retirees and eligible dependents, pursuant to the provisions of
3 the Retiree Health Care Act.

4 B. All money in the fund shall be invested as
5 provided for in Subsection [~~D~~] E of this section. All income
6 earned from investment of the fund shall be credited to the
7 fund. Except as otherwise specifically provided [~~herein~~] in
8 the Retiree Health Care Act, the money in the fund is
9 appropriated to the board to carry out the provisions of [~~the~~
10 ~~Retiree Health Care~~] that act. Any funds remaining at the end
11 of any fiscal year shall not revert to the general fund.

12 [~~B.~~] C. The board shall provide for the collection of
13 premiums from eligible retirees and eligible dependents, which
14 money when combined with other money appropriated to the fund
15 shall be sufficient to provide the required insurance coverage
16 and to pay the expenses of the authority. All premiums and
17 other money appropriated to the fund shall be credited to the
18 fund.

19 [~~C.~~] D. All premiums and other money collected by the
20 authority shall be received and disbursed directly by the
21 authority. Receipts and disbursements are subject to audit by
22 the state auditor.

23 [~~D.~~] E. The board shall determine which money in the
24 fund constitutes the long-term reserves of the authority. The
25 state investment officer shall invest the long-term reserves of

1 the authority in accordance with the provisions of Sections
2 6-8-1 through 6-8-16 NMSA 1978. The state treasurer shall
3 invest the money in the fund that does not constitute the long-
4 term reserves of the fund in accordance with the applicable
5 provisions of Chapter 6, Article 10 NMSA 1978."

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underscored material = new
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1 JOINT MEMORIAL

2 **48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

3 INTRODUCED BY

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6 DISCUSSION DRAFT

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10 A JOINT MEMORIAL

11 REQUESTING A MORATORIUM ON BENEFIT-ENHANCEMENT LEGISLATION THAT
12 AFFECTS THE RETIREMENT SYSTEMS OF THE PUBLIC EMPLOYEES
13 RETIREMENT ASSOCIATION AND THE EDUCATIONAL RETIREMENT BOARD.
14

15 WHEREAS, Article 20, Section 22 of the constitution of New
16 Mexico states that the legislature shall not enact any law that
17 increases the benefits paid by a public employees retirement
18 system or an educational retirement system or changes the
19 funding formula for a retirement plan unless adequate funding
20 is provided to cover the cost of the new benefits; and

21 WHEREAS, the retirement systems' basic funding objective
22 is to meet long-term benefit promises to retirees and their
23 beneficiaries through contributions, which, when combined with
24 present assets and future investments, are sufficient to meet
25 the present and future financial obligations of the retirement

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1 systems; and

2 WHEREAS, investment market conditions can challenge the
3 actuarially assumed investment return of eight percent that is
4 used for purposes of actuarial valuations of the retirement
5 systems; and

6 WHEREAS, the actuarial soundness of these retirement
7 systems is absolutely necessary in order to maintain retirement
8 benefits for public employees and educators; and

9 WHEREAS, there has been a proliferation of legislative
10 proposals introduced in recent years that pertain to benefit
11 enhancements for different groups covered by the retirement
12 systems; and

13 WHEREAS, many of these proposals may adversely affect
14 other groups covered by the retirement systems, and passage of
15 multiple benefit-enhancement proposals in any legislative
16 session may cumulatively have a negative actuarial impact on
17 and cost to the retirement systems; and

18 WHEREAS, the retirement systems represent a significant
19 benefit to public employees and educators and need to be
20 protected from erosion by special interests and employer groups
21 that seek to address retention and recruitment issues through
22 benefit enhancements in lieu of salary increases;

23 NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE
24 STATE OF NEW MEXICO that a two-year moratorium on benefit-
25 enhancement proposals that affect the public employees

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underscored material = new
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retirement system and the educational retirement system be

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

BE IT FURTHER RESOLVED that all proposed legislation
pertaining to benefit enhancements to the public employees
retirement system and the educational retirement system be
tabled so that the true funded status of those systems can be
better ascertained; and

BE IT FURTHER RESOLVED that copies of this memorial be
transmitted to the legislative council service, the legislative
education study committee, the legislative finance committee,

requesting the legislature to refrain from sweeping year-end
severance tax revenues. the senate education committee, the senate
finance committee, the office of the governor, the educational
retirement board and the board of the public employees
retirement association.

WHEREAS, the severance taxes attributable to the
extraction of New Mexico's natural resources have been a
valuable revenue source for the creation and growth of the
severance tax permanent fund and for funding bonded
indebtedness for capital projects throughout the state; and

WHEREAS, the severance tax permanent fund is regarded as a
"rainy day" fund for the time when New Mexico's natural
resources are depleted and severance tax collections will
cease; and

WHEREAS, annual distributions from the severance tax
permanent fund to the general fund based on the value of the
severance tax permanent fund provide a significant revenue

1 stream for funding state operations; and

2 WHEREAS, the continued growth in the value of the
3 severance tax permanent fund is essential to the future welfare
4 of the residents of New Mexico; and

5 WHEREAS, the investments and pensions oversight committee
6 reviewed the severance tax permanent fund and the associated
7 contributions, investment performance and distributions; and

8 WHEREAS, current law provides that up to ninety-five
9 percent of the prior year's severance tax revenues may be used
10 to finance bonded indebtedness, and the remainder of the
11 revenue is to be deposited into the severance tax permanent
12 fund; and

13 WHEREAS, notwithstanding the statutory limitation, the
14 legislature in 2003, 2004 and 2005 authorized the allocation of
15 the remaining severance tax revenue for issuance of additional
16 supplemental severance tax bonds, thus depriving the severance
17 tax permanent fund of the revenue; and

18 WHEREAS, this practice, known as the "sweep" of year-end
19 revenues, has resulted in a cumulative diversion of more than
20 two hundred million dollars (\$200,000,000) from the severance
21 tax permanent fund;

22 NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE
23 STATE OF NEW MEXICO that it refrain from future authorizations
24 to "sweep" year-end severance tax revenues that would allow
25 bonded indebtedness in excess of ninety-five percent of prior

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1 year revenues; and

2 BE IT FURTHER RESOLVED that copies of this memorial be
3 transmitted to the president pro tempore of the senate and the
4 speaker of the house of representatives.

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